

Judicial Branch

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The judicial branch: profile of the judicial branch, summary of recent significant supreme court decisions, and descriptions of the supreme court, court system, and judicial service agencies

Wisconsin's People



Kathleen Sitter, LRB

WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	2009
William A. Bablitch (term ended 7/31/03)	1983	August 1983	2003
Jon P. Wilcox	1992*	August 1997	2007
Ann Walsh Bradley	1995	August 1995	2005
N. Patrick Crooks	1996	August 1996	2006
David T. Prosser, Jr.	1998*	August 2001	2011
Diane S. Sykes	1999*	August 2000	2010
Patience D. Roggensack	2003**	August 2003	2013

*Initially appointed by the governor.

**Elected to Supreme Court on April 1, 2003, to fill a seat held by Justice William A. Bablitch who did not seek reelection.

Sources: 2001-2002 *Wisconsin Statutes*; State Elections Board, departmental data, May 2003; Director of State Courts, departmental data, May 2003.



The Wisconsin Supreme Court meets in its newly renovated chamber in the East Wing of the State Capitol. Pictured from left to right are Justice David T. Prosser, Jr., Justice Ann Walsh Bradley, Justice William A. Bablitch, Chief Justice Shirley S. Abrahamson, Justice Jon P. Wilcox, Justice N. Patrick Crooks, and Justice Diane S. Sykes. Not pictured is Justice Patience D. Roggensack, who joined the court on August 1, 2003. She was elected to the court on April 1, 2003, to fill a vacancy resulting from the departure of Justice Bablitch, who did not seek reelection. (Mark Hertzberg, Racine Journal Times)

JUDICIAL BRANCH

A PROFILE OF THE JUDICIAL BRANCH

Introducing the Court System. The judicial branch and its system of various courts may appear very complex to the nonlawyer. It is well-known that the courts are required to try persons accused of violating criminal law and that conviction in the trial court may result in punishment by fine or imprisonment or both. The courts also decide civil matters between private citizens, ranging from landlord-tenant disputes to adjudication of corporate liability involving many millions of dollars and months of costly litigation. In addition, the courts act as referees between citizens and their government by determining the permissible limits of governmental power and the extent of an individual's rights and responsibilities.

A court system that strives for fairness and justice must settle disputes on the basis of appropriate rules of law. These rules are derived from a variety of sources, including the state and federal constitutions, legislative acts and administrative rules, as well as the "common law", which reflects society's customs and experience as expressed in previous court decisions. This body of law is constantly changing to meet the needs of an increasingly complex world. The courts have the task of seeking the delicate balance between the flexibility and the stability needed to protect the fundamental principles of the constitutional system of the United States.

The Supreme Court. The judicial branch is headed by the Wisconsin Supreme Court of 7 justices, each elected statewide to a 10-year term. The supreme court is primarily an appellate court and serves as Wisconsin's "court of last resort". It also exercises original jurisdiction in a small number of cases of statewide concern. There are no appeals to the supreme court as a matter of right. Instead, the court has discretion to determine which appeals it will hear.

In addition to hearing cases on appeal from the court of appeals, there also are three instances in which the supreme court, at its discretion, may decide to bypass the appeals court. First, the supreme court may review a case on its own initiative. Second, it may decide to review a matter without an appellate decision based on a petition by one of the parties. Finally, the supreme court may take jurisdiction in a case if the appeals court finds it needs guidance on a legal question and requests supreme court review under a procedure known as "certification".

The Court of Appeals. The Court of Appeals, created August 1, 1978, is divided into 4 appellate districts covering the state, and there are 16 appellate judges, each elected to a 6-year term. The "court chambers", or principal offices for the districts, are located in Madison (5 judges), Milwaukee (4 judges), Waukesha (4 judges), and Wausau (3 judges).

In the appeals court, 3-judge panels hear all cases, except small claims actions, municipal ordinance violations, traffic violations, and mental health, juvenile, and misdemeanor cases. These exceptions may be heard by a single judge unless a panel is requested.

Circuit Courts. Following a 1977-78 reorganization of the Wisconsin court system, the circuit court became the "single level" trial court for the state. Circuit court boundaries were revised so that, except for 3 combined-county circuits (Buffalo-Pepin, Forest-Florence, and Shawano-Menominee), each county became a circuit, resulting in a total of 69 circuits.

In the more populous counties, a circuit may have several branches with one judge assigned to each branch. As of June 30, 2003, Wisconsin had a combined total of 241 circuits or circuit branches and the same number of circuit judgeships, with each judge elected to a 6-year term. For administrative purposes, the circuit court system is divided into 10 judicial administrative districts, each headed by a chief judge appointed by the supreme court.

A final judgment by the circuit court can be appealed to the Wisconsin Court of Appeals, but a decision by the appeals court can be reviewed only if the Wisconsin Supreme Court grants a petition for review.

Municipal Courts. Individually or jointly, cities, villages, and towns may create municipal courts with jurisdiction over municipal ordinance violations that have monetary penalties. Over

200 municipalities have done so. These courts are not courts of record, and they have limited jurisdiction. Usually, municipal judgeships are not full-time positions.

Selection and Qualification of Judges. In Wisconsin, all justices and judges are elected on a nonpartisan ballot in April. The Wisconsin Constitution provides that supreme court justices and appellate and circuit judges must have been licensed to practice law in Wisconsin for at least 5 years prior to election or appointment. While state law does not require that municipal judges be attorneys, municipalities may impose such a qualification in their jurisdictions.

Supreme court justices are elected on a statewide basis; appeals court and circuit court judges are elected in their respective districts. The governor may make an appointment to fill a vacancy in the office of justice or judge to serve until a successor is elected. When the election is held, the candidate elected assumes the office for a full term.

Since 1955, Wisconsin has permitted retired justices and judges to serve as “reserve” judges. At the request of the chief justice of the supreme court, reserve judges fill vacancies temporarily or help to relieve congested calendars. They exercise all the powers of the court to which they are assigned.

Judicial Agencies Assisting the Courts. Numerous state agencies assist the courts. The Wisconsin Supreme Court appoints the Director of State Courts, the State Law Librarian and staff, the Board of Bar Examiners, the director of the Office of Lawyer Regulation, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Council, and the State Bar of Wisconsin.

The shared concern of these agencies is to improve the organization, operation, administration, and procedures of the state judicial system. They also function to promote professional standards, judicial ethics, and legal research and reform.

Court Process in Wisconsin. Both state and federal courts have jurisdiction over Wisconsin citizens. State courts generally adjudicate cases pertaining to state laws, but the federal government may give state courts jurisdiction over specified federal questions. Courts handle two types of cases – civil and criminal.

Civil Cases. Generally, civil actions involve individual claims in which a person seeks a remedy for some wrong done by another. For example, if a person has been injured in an automobile accident, the complaining party (plaintiff) may sue the offending party (defendant) to compel payment for the injuries.

In a typical civil case, the plaintiff brings an action by filing a summons and a complaint with the circuit court. The defendant is served with copies of these documents, and the summons directs the defendant to respond to the plaintiff’s attorney. Various pretrial proceedings, such as pleadings, motions, pretrial conferences, and discovery, may be required. If no settlement is reached, the matter goes to trial. The U.S. and Wisconsin Constitutions guarantee trial by jury, but if both parties consent, the trial may be conducted by the court without a jury. The jury in a civil case consists of 6 persons unless a greater number, not to exceed 12, is requested. Five-sixths of the jurors must agree on the verdict. Based on the verdict, the court enters a judgment for the plaintiff or defendant.

Wisconsin law provides for small claims actions that are streamlined and informal. These actions typically involve the collection of small personal or commercial debts and are limited to questions of \$5,000 or less. Small claims cases are decided by the circuit court judge, unless a jury trial is requested. Attorneys commonly are not used.

Criminal Cases. Under Wisconsin law, criminal conduct is an act prohibited by state law and punishable by a fine or imprisonment or both. There are two types of crime – felonies and misdemeanors. A felony is punishable by confinement in a state prison for one year or more; all other crimes are misdemeanors punishable by imprisonment in a county jail. Misdemeanors have a maximum sentence of 12 months unless the violator is a “repeater” as defined in the statutes.

Because a crime is an offense against the state, the state, rather than the crime victim, brings action against the defendant. A typical criminal action begins when the district attorney, an elected county official who acts as an agent of the state in prosecuting the case, files a criminal complaint in the circuit court stating the essential facts concerning the offense charged. The defendant may or may not be arrested at that time. If the defendant has not yet been arrested, the

judge or a court commissioner then issues an “arrest warrant” in the case of a felony or a “summons” in the case of a misdemeanor. A law enforcement officer then must serve a copy of the warrant or summons on an individual and make an arrest.

Once in custody, the defendant is taken before a circuit judge or court commissioner, informed of the charges, and given the opportunity to be represented by a lawyer at public expense if he or she cannot afford to hire one. Bail may be set at this time or later. In the case of a misdemeanor, a trial date is set. In felony cases, the defendant has a right to a preliminary examination, which is a hearing before the court to determine whether the state has probable cause to charge the individual. If the defendant does not waive the preliminary examination, the judge or court commissioner transfers the action to a circuit court for a formal hearing, called an “arraignment”. If probable cause is found, the person is bound over for trial.

If the preliminary examination is waived, or if it is held and probable cause found, the district attorney files an information (a sworn accusation on which the indictment is based) with the court. The arraignment is then held before the circuit court judge, and the defendant enters a plea (“guilty”, “not guilty”, “no contest subject to the approval of the court”, or “not guilty by reason of mental disease or defect”).

The case next proceeds to trial in circuit court. Criminal cases are tried by a jury of 12, unless the defendant waives a jury trial or there is agreement for fewer jurors. The jury considers the evidence presented at the trial, determines the facts and renders a verdict of guilty or not guilty based on instructions given by the circuit judge. If the jury issues a verdict of guilty, a judgment of conviction is entered and the court determines the sentence. The court may order a presentence investigation before pronouncing sentence.

In a criminal case, the jury’s verdict must be unanimous. If not, the defendant is acquitted (cleared of the charge). Once acquitted, a person cannot be tried again in criminal court for the same charge, based on provisions in both the federal and state constitutions that prevent double jeopardy. Aggrieved parties may, however, bring a civil action against the individual for damages, based on the incident.

History of the Court System. The basic powers and framework of the court system in Wisconsin were established by Article VII of the Wisconsin Constitution when Wisconsin became a state in 1848. At that time, judicial power was vested in a supreme court, circuit courts, courts of probate, and justices of the peace. Subject to certain limitations, the legislature was granted power to establish inferior courts and municipal courts and determine their jurisdiction.

The constitution originally divided the state into five judicial circuit districts. The five judges who presided over those circuit courts were to meet at least once a year at Madison as a “Supreme Court” until the legislature established a separate court. The Wisconsin Supreme Court was instituted in 1853 with 3 members chosen in statewide elections – one was elected as chief justice and the other 2 as associate justices. In 1877, a constitutional amendment increased the number of associate justices to 4. An 1889 amendment prescribed the current practice under which all court members are elected as justices. The justice with the longest continuous service presides as chief justice, unless that person declines, in which case the office passes to the next justice in terms of seniority. Since 1903, the constitution has required a court of 7 members.

Over the years, the legislature created a large number of courts with varying types of jurisdiction. As a result of numerous special laws, there was no uniformity among the counties. Different types of courts in a single county had overlapping jurisdiction, and procedure in the various courts was not the same. A number of special courts sprang up in heavily urbanized areas, such as Milwaukee County, where the judicial burden was the greatest. In addition, many municipalities established police justice courts for enforcement of local ordinances, and there were some 1,800 justices of the peace.

The 1959 Legislature enacted Chapter 315, effective January 1, 1962, which provided for the initial reorganization of the court system. The most significant feature of the reorganization was the abolition of special statutory courts (municipal, district, superior, civil, and small claims). In addition, a uniform system of jurisdiction and procedure was established for all county courts.

The 1959 law also created the machinery for smoother administration of the court system. One problem under the old system was the imbalance of caseloads from one jurisdiction to another.

In some cases, the workload was not evenly distributed among the judges within the same jurisdiction. To correct this, the chief justice of the supreme court was authorized to assign circuit and county judges to serve temporarily as needed in either type of court. The 1961 Legislature took another step to assist the chief justice in these assignments by creating the post of Administrative Director of Courts. This position has since been redefined by the supreme court and renamed the Director of State Courts. In recent years, the director has been given added administrative duties and increased staff to perform them.

The last step in the 1959 reorganization effort was the April 1966 ratification of two constitutional amendments that abolished the justices of the peace and permitted municipal courts. At this point the Wisconsin system of courts consisted of the supreme court, circuit courts, county courts, and municipal courts.

In April 1977, the court of appeals was authorized when the voters ratified an amendment to Article VII, Section 2, of the Wisconsin Constitution, which outlined the current structure of the state courts:

The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform state-wide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14.

In June 1978, the legislature implemented the constitutional amendment by enacting Chapter 449, Laws of 1977, which added the court of appeals to the system and eliminated county courts.



The Wisconsin Supreme Court justices discuss a case in their conference room after hearing oral arguments. The court accepts about 110 cases for consideration per year during their term which lasts from September through June. (Wisconsin Supreme Court)

SUPREME COURT

Chief Justice: SHIRLEY S. ABRAHAMSON

Justices: WILLIAM A. BABLITCH (term ended 7/31/03)

JON P. WILCOX

ANN WALSH BRADLEY

N. PATRICK CROOKS

DAVID T. PROSSER, JR.

DIANE S. SYKES

PATIENCE D. ROGGENSACK (effective 8/1/03)

Mailing Address: Supreme Court and Clerk: P.O. Box 1688, Madison 53701-1688.

Locations: Supreme Court: Room 16 East, State Capitol, Madison; Clerk: 110 East Main Street, Madison.

Telephone: 266-1298.

Fax: 261-8299.

Internet Address: <http://www.wicourts.gov>

Clerk of Supreme Court: CORNELIA G. CLARK, 266-1880, Fax: 267-0640.

Court Commissioners: NANCY KOPP, 266-7442; GREGORY POKRASS, 266-7442;

JULIE RICH, 266-7442; JOSEPH M. WILSON, 266-7442.

Number of Positions: 38,50.

Total Budget 2001-03: \$8,403,600.

Constitutional References: Article VII, Sections 2-4, 9-11, and 13.

Statutory Reference: Chapter 751.

Responsibility: The Wisconsin Supreme Court is the final authority on matters pertaining to the Wisconsin Constitution and the highest tribunal for all actions begun in the state, except those involving federal issues appealable to the U.S. Supreme Court. The court decides which cases it will hear, usually on the basis of whether the questions raised are of statewide importance. It exercises “appellate jurisdiction” if 3 or more justices grant a petition to review a decision of a lower court. It exercises “original jurisdiction” as the first court to hear a case if 4 or more justices approve a petition requesting it to do so. Although the majority of cases advance from the circuit court to the court of appeals before reaching the supreme court, the high court may decide to bypass the court of appeals. The supreme court can do this on its own motion or at the request of the parties; in addition, the court of appeals may certify a case to the supreme court, asking the high court to take the case directly from the circuit court.

The supreme court does not take testimony. Instead, it decides cases on the basis of written briefs and oral argument. It is required by statute to deliver its decisions in writing, and it may publish them in the *Wisconsin Reports* as it deems appropriate.

The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state’s judicial system. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin’s courts. When a calendar is congested or a vacancy occurs in a circuit or appellate court, the chief justice may assign an active judge or reserve judge to serve temporarily as a judge of either type of court.

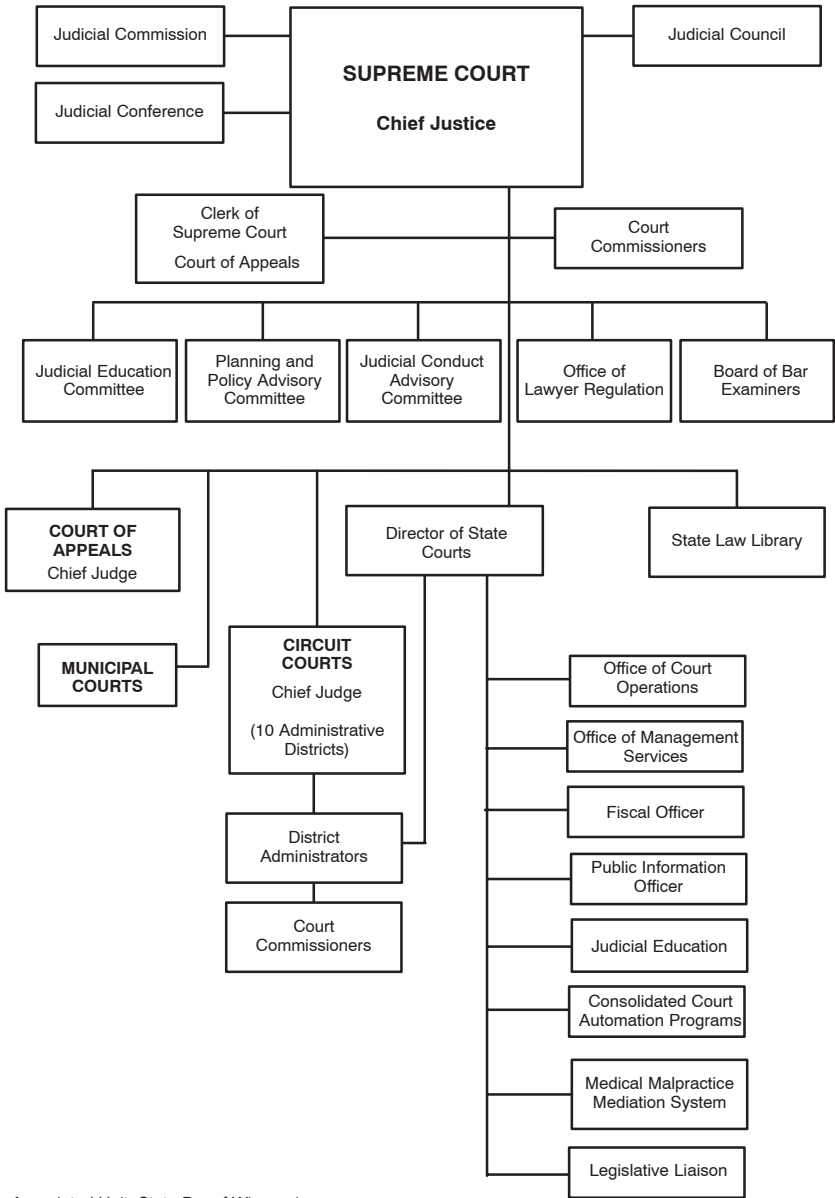
Organization: The supreme court consists of 7 justices elected to 10-year terms. They are chosen in statewide elections on the nonpartisan April ballot and take office on the following August 1. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are sometimes filled by gubernatorial appointees who serve until a successor can be elected. The authorized salary for supreme court justices for fiscal year 2002-03 is \$122,418. The chief justice receives \$130,418.

The justice with the most seniority on the court serves as chief justice unless he or she declines the position. In that event, the justice with the next longest seniority serves as chief justice. Any 4 justices constitute a quorum for conducting court business.

The court staff is appointed from outside the classified service. It includes the director of state courts who assists the court in its administrative functions; 4 commissioners who are attorneys

and assist the court in its judicial functions; a clerk who keeps the court’s records; and a marshal who performs a variety of duties. Each justice has a secretary and one law clerk.

WISCONSIN COURT SYSTEM – ADMINISTRATIVE STRUCTURE



COURT OF APPEALS

<i>Judges: District I:</i>	PATRICIA S. CURLEY (2008) RALPH ADAM FINE (2006) CHARLES B. SCHUDSON (2004) TED E. WEDEMEYER, JR.* (2009)
<i>District II:</i>	DANIEL P. ANDERSON (2007) RICHARD S. BROWN* (2006) NEAL P. NETTESHEIM (2008) HARRY G. SNYDER (2004)
<i>District III:</i>	R. THOMAS CANE** (2007) MICHAEL W. HOOVER* (2009) GREGORY PETERSON (2005)
<i>District IV:</i>	DAVID G. DEININGER (2009) CHARLES P. DYKMAN* (2004) PAUL LUNDSTEN (2007) MARGARET J. VERGERONT (2006) vacancy

Note: *indicates the presiding judge of the district. **indicates chief judge of the Court of Appeals. The judges' current terms expire on July 31 of the year shown.

Court of Appeals Clerk: CORNELIA G. CLARK, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Suite 215, Madison, 266-1880, Fax: 267-0640.

Staff Attorneys: 10 East Doty Street, 7th Floor, Madison 53703, 266-9320.

Internet Address: <http://www.wicourts.gov/appeals>

Number of Positions: 75.50.

Total Budget 2001-03: \$15,260,000.

Constitutional Reference: Article VII, Section 5.

Statutory Reference: Chapter 752.

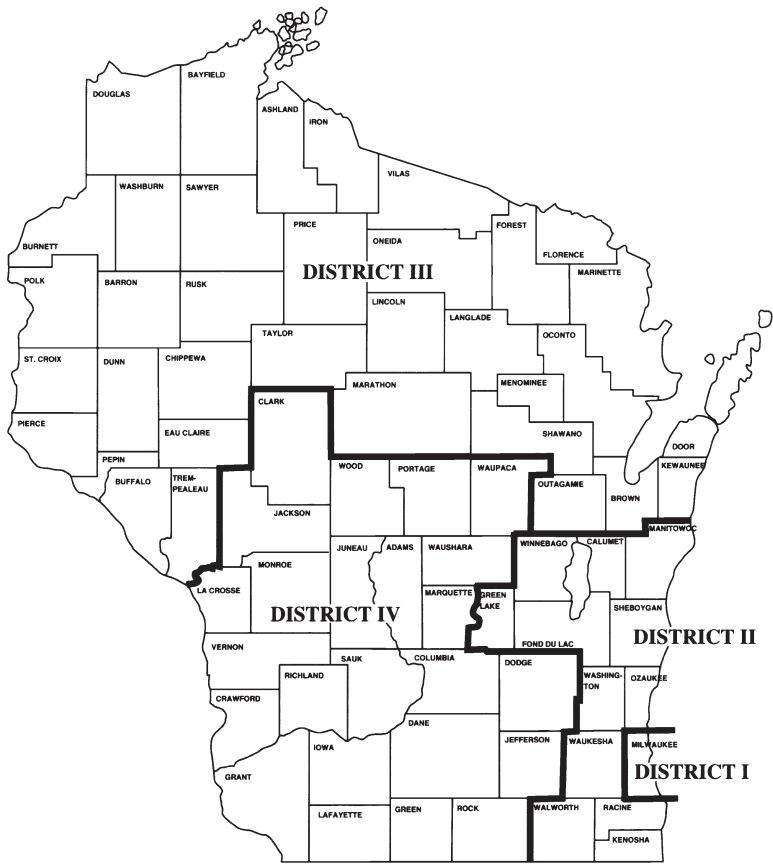
Organization: A constitutional amendment ratified on April 5, 1977, mandated the Court of Appeals, and Chapter 187, Laws of 1977, implemented the amendment. The court consists of 16 judges serving in 4 districts (4 judges each in Districts I and II, 3 judges in District III, and 5 judges in District IV). The Wisconsin Supreme Court appoints a chief judge of the Court of Appeals to serve as administrative head of the court for a 3-year term, and the clerk of the supreme court serves as the clerk for the court.

Appellate judges are elected for 6-year terms in the nonpartisan April election and begin their terms of office on the following August 1. They must reside in the district from which they are chosen. Only one Court of Appeals judge may be elected in a district in any one year. The authorized salary for appeals court judges for fiscal year 2002-03 is \$115,488.

Functions: The Court of Appeals has both appellate and supervisory jurisdiction, as well as original jurisdiction to issue prerogative writs. The final judgments and orders of a circuit court may be appealed to the Court of Appeals as a matter of right. Other judgments or orders may be appealed upon leave of the appellate court.

The court usually sits as a 3-judge panel to dispose of cases on their merits. However, a single judge may decide certain categories of cases, including juvenile cases; small claims; municipal ordinance and traffic violations; and mental health and misdemeanor cases. No testimony is taken in the appellate court. The court relies on the trial court record and written briefs in deciding a case, and it prescreens all cases to determine whether oral argument is needed. Both oral argument and "briefs only" cases are placed on a regularly issued calendar. The court gives criminal cases preference on the calendar when it is possible to do so without undue delay of civil cases. Staff attorneys, secretaries, and law clerks assist the judges.

COURT OF APPEALS DISTRICTS



Decisions of the appellate court are delivered in writing, and the court’s publication committee determines which decisions will be published in the *Wisconsin Reports*. Only published opinions have precedential value and may be cited as controlling law in Wisconsin.

CIRCUIT COURTS

District 1: Milwaukee County Courthouse, 901 North 9th Street, Room 609, Milwaukee 53233-1425. Telephone: (414) 278-5113; Fax: (414) 223-1264.

Chief Judge: MICHAEL P. SULLIVAN.

Administrator: BRUCE HARVEY.

District 2: Racine County Courthouse, 730 Wisconsin Avenue, Racine 53403-1274. Telephone: (262) 636-3133; Fax: (262) 636-3437.

Chief Judge: GERALD P. PTACEK.

Administrator: KERRY CONNELLY.

District 3: Waukesha County Courthouse, 515 West Moreland Boulevard, Room 359, Waukesha 53188-2428. Telephone: (262) 548-7209; Fax: (262) 548-7815.

Chief Judge: KATHRYN W. FOSTER.

Administrator: MICHAEL NEIMON.

District 4: 315 Algoma Boulevard, Suite 102, Oshkosh 54901-4773. Telephone: (920) 424-0028; Fax: (920) 424-0096.

Chief Judge: L. EDWARD STENGEL.

Administrator: JERRY LANG.

District 5: City-County Building, Room 319, Madison 53709-0001. Telephone: 267-8820; Fax: 267-4151.

Chief Judge: MICHAEL N. NOWAKOWSKI.

Administrator: GAIL RICHARDSON.

District 6: 2957 Church Street, Suite B, Stevens Point 54481-5210. Telephone: (715) 345-5295; Fax: (715) 345-5297.

Chief Judge: JAMES EVENSON.

Administrator: vacancy.

District 7: La Crosse County Law Enforcement Center, 333 Vine Street, Rm. 3504, La Crosse 54601-3296. Telephone: (608) 785-9546; Fax: (608) 785-5530.

Chief Judge: MICHAEL J. ROSBOROUGH.

Administrator: PATRICK BRUMMOND.

District 8: 414 East Walnut Street, Suite 221, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.

Chief Judge: JOSEPH M. TROY.

Administrator: KATHLEEN MURPHY.

District 9: 2100 Stewart Avenue, Suite 310, Wausau 54401. Telephone: (715) 842-3872; Fax: (715) 845-4523.

Chief Judge: JAMES MOHR.

Administrator: SCOTT JOHNSON.

District 10: 405 South Barstow Street, Suite C, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.

Chief Judge: EDWARD BRUNNER.

Administrator: GREGG MOORE.

Internet Address: <http://www.wicourts.gov/circuit>

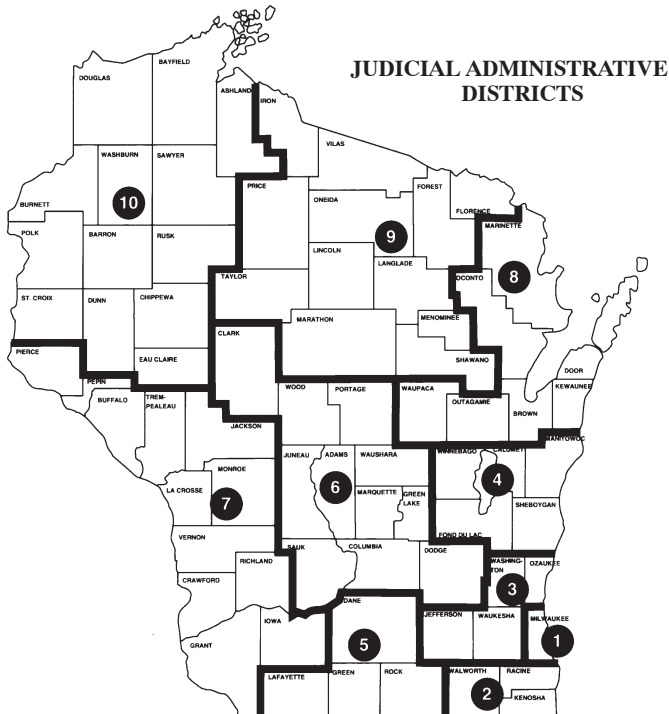
State-Funded Positions: 511.00.

Total Budget 2001-03: \$147,472,900.

Constitutional References: Article VII, Sections 2, 6-11, and 13.

Statutory Reference: Chapter 753.

Responsibility: The circuit court is the trial court of general jurisdiction in Wisconsin. It has original jurisdiction in both civil and criminal matters unless exclusive jurisdiction is given to



another court. It also reviews state agency decisions and hears appeals from municipal courts. Jury trials are conducted only in circuit courts.

The constitution requires that a circuit be bounded by county lines. As a result, each circuit consists of a single county, except for 3 two-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano). Where judicial caseloads are heavy, a circuit may have several branches, each with an elected judge. Statewide, 38 of the state's 69 judicial circuits had multiple branches as of June 30, 2003, for a total of 241 circuit judgeships.

Organization: Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis in the county in which they serve in the April election and take office the following August 1. The governor may fill circuit court vacancies by appointment, and the appointees serve until a successor is elected. The authorized salary for circuit court judges for fiscal year 2002-03 is \$108,950. The state pays the salaries of circuit judges and court reporters. It also covers some of the expenses for interpreters, guardians ad litem, judicial assistants, court-appointed witnesses, and jury per diems. Counties bear the remaining expenses for operating the circuit courts.

Administrative Districts. Circuit courts are divided into 10 administrative districts, each supervised by a chief judge, appointed by the supreme court from the district's circuit judges. A judge usually cannot serve more than 3 successive 2-year terms as chief judge. The chief judge has authority to assign judges, manage caseload, supervise personnel, and conduct financial planning.

The chief judge in each district appoints a district court administrator from a list of candidates supplied by the director of state courts. The administrator manages the nonjudicial business of the district at the direction of the chief judge.

Circuit Court Commissioners are appointed by the circuit court to assist the court, and they must be attorneys licensed to practice law in Wisconsin. They may be authorized by the court to conduct various civil, criminal, family, small claims, juvenile, and probate court proceedings. Their

duties include issuing summonses, arrest warrants, or search warrants; conducting initial appearances; setting bail; conducting preliminary examinations and arraignments; imposing monetary penalties in certain traffic cases; conducting certain family, juvenile, and small claims court proceedings; hearing petitions for mental commitments; and conducting uncontested probate proceedings. On their own authority, court commissioners may perform marriages, administer oaths, take depositions, and issue subpoenas and certain writs.

The statutes require Milwaukee County to have full-time family, small claims, and probate court commissioners. All other counties must have a family court commissioner, and they may employ other full- or part-time court commissioners as deemed necessary.



The Risser Justice Center, located across from the State Capitol, is named in honor of the Risser/ Warner family whose service to the State of Wisconsin spans 3 centuries. Senator Fred A. Risser, pictured above, is the fourth generation of his family to serve in the legislature and represent the City of Madison. His father, Fred E. Risser served in the Senate from 1937-48 as a member of the Progressive Party; his grandfather, Ernest Warner was a Republican in the Assembly in 1905; and his great grandfather, Col. Clement Warner served in both the Senate (1867-68) and Assembly (1883) as a member of the Union and Republican Parties. Senator Risser, who was elected to the Assembly in 1956 and the Senate in 1962, is the longest serving legislator in Wisconsin history. His 46 years in office currently ties him with one other in the nation for the most continuous years of service in a state legislature.

The Risser Justice Center, completed in 2001, houses the Department of Justice, the State Law Library, and the offices of the Senate and Assembly Chief Clerks. (Kathleen Sitter, LRB)

JUDGES OF CIRCUIT COURT

June 30, 2003

Circuits ¹	Court Location	Judges	Term Expires July 31
Adams	Friendship	Duane H. Polivka ²	2003
Ashland	Ashland	Robert E. Eaton	2006
Barron			
Branch 1	Barron	James C. Eaton	2004
Branch 2	Barron	Edward R. Brunner	2006
Bayfield	Washburn	John H. Priebe ³	2003
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder ⁴	2003
Branch 2	Green Bay	Mark Warpinski	2006
Branch 3	Green Bay	Susan Bischel	2004
Branch 4	Green Bay	Kendall M. Kelley ⁴	2003
Branch 5	Green Bay	Peter Naze	2005
Branch 6	Green Bay	J.D. McKay ⁴	2003
Branch 7	Green Bay	Richard J. Dietz	2007
Branch 8	Green Bay	William M. Atkinson ⁴	2003
Buffalo-Pepin	Alma	Dane Morey	2008
Burnett	Siren	Michael J. Gableman ⁴	2003
Calumet	Chilton	Donald A. Poppy	2004
Chippewa			
Branch 1	Chippewa Falls	Roderick Cameron	2008
Branch 2	Chippewa Falls	Thomas J. Szama	2007
Clark	Neillsville	Jon M. Counsell	2006
Columbia			
Branch 1	Portage	Daniel S. George ⁴	2003
Branch 2	Portage	James O. Miller	2005
Branch 3	Portage	Richard L. Rehm ⁴	2003
Crawford	Prairie du Chien	Michael T. Kirchman	2007
Dane			
Branch 1	Madison	Robert DeChambeau	2005
Branch 2	Madison	Maryann Sumi	2005
Branch 3	Madison	John C. Albert	2006
Branch 4	Madison	Steven D. Ebert	2004
Branch 5	Madison	Diane M. Nicks	2007
Branch 6	Madison	Richard Callaway ⁵	2003
Branch 7	Madison	Moria Krueger ⁴	2003
Branch 8	Madison	Patrick J. Fiedler	2006
Branch 9	Madison	Gerald C. Nichol	2006
Branch 10	Madison	Angela B. Bartell ⁴	2003
Branch 11	Madison	Daniel R. Moeser ⁴	2003
Branch 12	Madison	David Flanagan	2006
Branch 13	Madison	Michael N. Nowakowski ⁴	2003
Branch 14	Madison	C. William Foust	2004
Branch 15	Madison	Stuart Schwartz	2004
Branch 16	Madison	Sarah O'Brien	2004
Branch 17	Madison	Paul Higginbotham	2006
Dodge			
Branch 1	Juneau	Daniel Klossner	2008
Branch 2	Juneau	John R. Storck	2007
Branch 3	Juneau	Andrew P. Bissonnette	2007
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2006
Branch 2	Sturgeon Bay	Peter C. Diltz	2006
Douglas			
Branch 1	Superior	Michael T. Lucci ⁴	2003
Branch 2	Superior	George L. Glonek ⁴	2003
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2004
Branch 2	Menomonie	Rod Smeltzer ⁴	2003
Eau Claire			
Branch 1	Eau Claire	Lisa Stark	2006
Branch 2	Eau Claire	Eric J. Wahl	2005
Branch 3	Eau Claire	William M. Gabler	2006
Branch 4	Eau Claire	Benjamin Proctor	2006
Branch 5	Eau Claire	Paul J. Lenz	2006
Florence (see <i>Forest-Florence</i>)			
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2008
Branch 2	Fond du Lac	Peter L. Grimm	2004
Branch 3	Fond du Lac	Richard J. Nuss ⁴	2003
Branch 4	Fond du Lac	Steven W. Weinke	2004
Branch 5	Fond du Lac	Robert J. Wirtz	2005
Forest-Florence	Crandon	Robert A. Kennedy, Jr.	2008
Grant			
Branch 1	Lancaster	Robert P. Van De Hey	2005
Branch 2	Lancaster	George S. Curry ⁴	2003
Green	Monroe	Jim Beer ⁴	2003
Green Lake	Green Lake	William M. McMonigal	2005
Iowa	Dodgeville	William D. Dyke	2004
Iron	Hurley	Patrick John Madden	2005
Jackson	Black River Falls	Gerald Laabs	2008

JUDGES OF CIRCUIT COURT

June 30, 2003–Continued

Circuits ¹	Court Location	Judges	Term Expires July 31
Jefferson			
Branch 1	Jefferson	John M. Ullsvik ⁴	2003
Branch 2	Jefferson	William F. Hue	2007
Branch 3	Jefferson	Jacqueline R. Erwin ⁴	2003
Branch 4	Jefferson	Randy R. Koschnick	2005
Juneau	Mauston	Dennis C. Schuh ⁶	2004
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli ⁴	2003
Branch 2	Kenosha	Barbara A. Kluka	2007
Branch 3	Kenosha	Bruce Schroeder	2008
Branch 4	Kenosha	Michael S. Fisher	2005
Branch 5	Kenosha	Wilbur W. Warren III ⁴	2003
Branch 6	Kenosha	Mary K. Wagner ⁴	2003
Branch 7	Kenosha	S. Michael Wilk	2006
Kewaunee	Kewaunee	Dennis J. Mleziva	2004
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2007
Branch 2	La Crosse	Michael J. Mulroy	2007
Branch 3	La Crosse	Dennis G. Montabon ⁴	2003
Branch 4	La Crosse	John J. Perlich ⁴	2003
Branch 5	La Crosse	Dale T. Pasell	2005
Lafayette	Darlington	William D. Johnston ⁴	2003
Langlade	Antigo	James P. Jansen	2005
Lincoln			
Branch 1	Merrill	John Michael Nolan	2004
Branch 2	Merrill	Glenn H. Hartley	2005
Manitowoc			
Branch 1	Manitowoc	Patrick Willis	2004
Branch 2	Manitowoc	Darryl W. Deets	2007
Branch 3	Manitowoc	Fred H. Hazlewood	2005
Marathon			
Branch 1	Wausau	Dorothy L. Bain	2004
Branch 2	Wausau	Raymond F. Thums	2007
Branch 3	Wausau	Vincent K. Howard	2008
Branch 4	Wausau	Gregory Grau	2007
Branch 5	Wausau	Patrick Brady	2005
Marinette			
Branch 1	Marinette	David G. Miron	2008
Branch 2	Marinette	Tim A. Duket	2008
Marquette	Montello	Richard O. Wright	2007
Menominee	(see <i>Shawano-Menominee</i>)		
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2005
Branch 2	Milwaukee	M. Joseph Donald ⁴	2003
Branch 3	Milwaukee	Clare L. Fiorenza ⁴	2003
Branch 4	Milwaukee	Mel Flanagan	2006
Branch 5	Milwaukee	Mary Kuhnmuench	2004
Branch 6	Milwaukee	Kitty K. Brennan	2006
Branch 7	Milwaukee	Jean W. DiMotto ⁴	2003
Branch 8	Milwaukee	William Sosnay	2006
Branch 9	Milwaukee	Louis B. Butler	2008
Branch 10	Milwaukee	Timothy G. Dugan	2005
Branch 11	Milwaukee	Dominic S. Amato	2007
Branch 12	Milwaukee	Michael J. Skwierawski ⁷	2003
Branch 13	Milwaukee	Victor Manian	2006
Branch 14	Milwaukee	Christopher R. Foley	2004
Branch 15	Milwaukee	Michael B. Brennan	2007
Branch 16	Milwaukee	Michael J. Dwyer ⁴	2003
Branch 17	Milwaukee	Francis Wasielewski	2008
Branch 18	Milwaukee	Patricia McMahon	2005
Branch 19	Milwaukee	John E. McCormick	2005
Branch 20	Milwaukee	Dennis P. Moroney	2006
Branch 21	Milwaukee	William Brash	2008
Branch 22	Milwaukee	Timothy M. Witkowiak ⁴	2003
Branch 23	Milwaukee	Elsa C. Lamelas	2006
Branch 24	Milwaukee	Charles F. Kahn	2004
Branch 25	Milwaukee	John A. Franke	2005
Branch 26	Milwaukee	Michael P. Sullivan	2008
Branch 27	Milwaukee	Kevin E. Martens	2008
Branch 28	Milwaukee	Thomas R. Cooper	2006
Branch 29	Milwaukee	Richard J. Sankovitz ⁴	2003
Branch 30	Milwaukee	Jeffrey A. Conen ⁴	2003
Branch 31	Milwaukee	Daniel A. Noonan	2008
Branch 32	Milwaukee	Michael D. Guolee	2008
Branch 33	Milwaukee	Carl Ashley	2005
Branch 34	Milwaukee	Jacqueline D. Schellinger	2005
Branch 35	Milwaukee	Lee E. Wells	2006
Branch 36	Milwaukee	Jeffrey A. Kremers	2005
Branch 37	Milwaukee	Karen Christenson	2004
Branch 38	Milwaukee	Jeffrey A. Wagner	2006
Branch 39	Milwaukee	Michael Malmstadt	2006
Branch 40	Milwaukee	Joseph Wall	2007

JUDGES OF CIRCUIT COURT

June 30, 2003–Continued

Circuits ¹	Court Location	Judges	Term Expires July 31
Milwaukee (continued)			
Branch 41	Milwaukee	John J. DiMotto	2008
Branch 42	Milwaukee	David A. Hansher ⁴	2003
Branch 43	Milwaukee	Marshall Murray	2006
Branch 44	Milwaukee	Daniel L. Konkol	2004
Branch 45	Milwaukee	Thomas P. Donegan	2004
Branch 46	Milwaukee	Bonnie L. Gordon	2006
Branch 47	Milwaukee	John Siefert	2005
Monroe			
Branch 1	Sparta	Steven L. Abbott	2007
Branch 2	Sparta	Michael J. McAlpine	2004
Oconto			
Branch 1	Oconto	Larry L. Jeske	2005
Branch 2	Oconto	Richard D. Delforge	2004
Oneida			
Branch 1	Rhineland	Robert E. Kinney	2008
Branch 2	Rhineland	Mark A. Mangerson	2006
Outagamie			
Branch 1	Appleton	James T. Bayorgeon	2008
Branch 2	Appleton	Dennis C. Luebke ⁴	2003
Branch 3	Appleton	Joseph Troy	2005
Branch 4	Appleton	Harold Froehlich	2006
Branch 5	Appleton	Michael W. Gage ⁴	2003
Branch 6	Appleton	Dee R. Dyer	2006
Branch 7	Appleton	John A. Des Jardins	2006
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy ⁴	2003
Branch 2	Port Washington	Tom R. Wolfgram	2007
Branch 3	Port Washington	Joseph D. McCormack ⁴	2003
Pepin (see <i>Buffalo-Pepin</i>)			
Pierce	Ellsworth	Robert W. Wing	2004
Polk			
Branch 1	Balsam Lake	James Erickson	2008
Branch 2	Balsam Lake	Robert H. Rasmussen ⁴	2003
Portage			
Branch 1	Stevens Point	Frederic Fleishauer	2005
Branch 2	Stevens Point	John V. Finn	2007
Branch 3	Stevens Point	Thomas T. Flugaur	2006
Price	Phillips	Douglas Fox	2008
Racine			
Branch 1	Racine	Gerald P. Ptacek	2007
Branch 2	Racine	Stephen A. Simanek	2004
Branch 3	Racine	Emily S. Mueller	2005
Branch 4	Racine	Emmanuel J. Vuvunas	2004
Branch 5	Racine	Dennis J. Barry	2005
Branch 6	Racine	Wayne J. Marik ⁴	2003
Branch 7	Racine	Charles H. Constantine	2008
Branch 8	Racine	Faye M. Flancher ⁴	2003
Branch 9	Racine	Allan B. Thorhorst ⁴	2003
Branch 10	Racine	Richard J. Kreul	2006
Richland	Richland Center	Edward E. Leineweber ⁴	2003
Rock			
Branch 1	Janesville	James P. Daley	2008
Branch 2	Janesville	John H. Lussow	2004
Branch 3	Janesville	Michael J. Byron	2004
Branch 4	Beloit	Daniel Dillon	2007
Branch 5	Beloit	John W. Roethe ⁴	2003
Branch 6	Janesville	Richard T. Werner ⁴	2003
Branch 7	Beloit	James E. Welker	2006
Rusk	Ladysmith	Frederick Henderson	2004
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2008
Branch 2	Hudson	Edward F. Vlack	2007
Branch 3	Hudson	Scott R. Needham	2006
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2006
Branch 2	Baraboo	James Evenson	2004
Branch 3	Baraboo	Guy Reynolds	2006
Sawyer	Hayward	Norman L. Yackel ⁴	2003
Shawano-Menominee			
Branch 1	Shawano	James R. Habeck	2008
Branch 2	Shawano	Thomas G. Grover	2007
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel ⁴	2003
Branch 2	Sheboygan	Timothy M. Van Akkeren	2007
Branch 3	Sheboygan	Gary Langhoff	2005
Branch 4	Sheboygan	John B. Murphy	2003
Branch 5	Sheboygan	James J. Bolgert	2006
Taylor	Medford	Gary Lee Carlson	2004
Trempealeau	Whitehall	John A. Damon	2007
Vernon	Viroqua	Michael J. Rosborough	2005
Vilas	Eagle River	James Mohr	2008

JUDGES OF CIRCUIT COURT

June 30, 2003–Continued

Circuits ¹	Court Location	Judges	Term Expires July 31
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2006
Branch 2	Elkhorn	James L. Carlson	2004
Branch 3	Elkhorn	John R. Race ⁴	2003
Branch 4	Elkhorn	Michael S. Gibbs	2004
Washburn	Shell Lake	Eugene D. Harrington ⁴	2003
Washington			
Branch 1	West Bend	Patrick J. Faragher	2007
Branch 2	West Bend	Annette Ziegler	2004
Branch 3	West Bend	David Resheske	2006
Branch 4	West Bend	Andrew Gonring	2006
Waukesha			
Branch 1	Waukesha	Michael D. Bohren	2007
Branch 2	Waukesha	Mark Gempeler	2008
Branch 3	Waukesha	Ralph Ramirez	2005
Branch 4	Waukesha	Patrick L. Snyder ⁹	2003
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2008
Branch 6	Waukesha	Patrick C. Haughney	2008
Branch 7	Waukesha	J. Mac Davis ⁴	2003
Branch 8	Waukesha	James R. Kieffer ⁴	2007
Branch 9	Waukesha	Donald J. Hassin, Jr.	2003
Branch 10	Waukesha	Marianne Becker ¹⁰	2003
Branch 11	Waukesha	Robert G. Mawdsley	2006
Branch 12	Waukesha	Kathryn W. Foster	2006
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2005
Branch 2	Waupaca	John P. Hoffmann	2004
Branch 3	Waupaca	Raymond Huber	2006
Wausara	Wautoma	Lewis R. Murach	2005
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2006
Branch 2	Oshkosh	Robert Haase	2006
Branch 3	Oshkosh	Barbara Key	2004
Branch 4	Oshkosh	Robert Hawley	2006
Branch 5	Oshkosh	William H. Carver	2004
Branch 6	Oshkosh	Bruce K. Schmidt ⁴	2003
Wood			
Branch 1	Wisconsin Rapids	Dennis D. Conway	2003
Branch 2	Wisconsin Rapids	James M. Mason	2004
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr. ⁴	2003

¹Circuits are comprised of one county each, except for Buffalo-Pepin, Forest-Florence, and Shawano-Menominee. The current annual salary for all circuit court judges is \$108,950. Salaries could change as of August 1, 2003, when the circuit court judges commence new terms.

²Charles A. Pollex was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

³John P. Anderson was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

⁴Reelected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

⁵Shelley Gaylord was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

⁶Appointed by governor.

⁷David L. Borowski was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

⁸Terence Bourke was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

⁹Paul F. Reilly was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

¹⁰Linda Van De Water was newly elected on April 1, 2003, for a 6-year term to commence on August 1, 2003.

Sources: 2001-2002 *Wisconsin Statutes*; State Elections Board, departmental data, May 2003; Director of State Courts, departmental data, April 2003; governor's appointment notices.

MUNICIPAL COURTS

Constitutional References: Article VII, Sections 2 and 14.

Statutory References: Chapters 755 and 800.

Internet Address: <http://www.wicourts.gov/municipal>

Responsibility: The Wisconsin Legislature authorizes cities, villages, and towns to establish municipal courts to exercise jurisdiction over municipal ordinance violations that have monetary penalties. In addition, the Wisconsin Supreme Court ruled in 1991 (*City of Milwaukee v. Wroten*, 160 Wis. 2d 107) that municipal courts have authority to rule on the constitutionality of municipal ordinances.

As of May 1, 2003, there were 224 municipal courts with 226 municipal judges. Courts may have multiple branches; the City of Milwaukee's municipal court, for example, has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had three part-time commissioners as of May 2003.) Two or more municipalities may agree to form a joint court, and there are 13 joint courts, serving up to 10 municipalities each. Besides Milwaukee, Madison is the only city with a full-time municipal court.

Upon convicting a defendant, the municipal court may order payment of a forfeiture plus costs and assessments, or, if the defendant agrees, it may require community service in lieu of a forfeiture. In general, municipal courts may also order restitution up to \$4,000. Where local ordinances conform to state drunk driving laws, a municipal judge may suspend or revoke a driver's license.

If a defendant fails to pay a forfeiture or make restitution, the municipal court may suspend the driver's license or commit the defendant to jail. Municipal court decisions may be appealed to the circuit court of the county where the offense occurred.

Organization: Municipal judges are elected at the nonpartisan April election and take office May 1. The local governing body fixes the term of office at 2 to 4 years and determines the position's salary. There is no state requirement that the office be filled by an attorney, but a municipality may enact such a qualification by ordinance.

If a municipal judge is ill, disqualified, or unavailable, the chief judge of the judicial administrative district containing the municipality may transfer the case to another municipal judge in the district. If none is available, the case will be heard in circuit court.

History: Chapter 276, Laws of 1967, authorized cities, villages, and towns to establish municipal courts after the forerunner of municipal courts (the office of the justice of the peace) was eliminated by a constitutional amendment, ratified in April 1966. A constitutional amendment ratified in April 1977, which reorganized the state's court system, officially granted the legislature the power to authorize municipal courts.

STATEWIDE JUDICIAL AGENCIES

A number of statewide administrative and support agencies have been created by supreme court order or legislative enactment to assist the Wisconsin Supreme Court in its supervision of the Wisconsin judicial system.

DIRECTOR OF STATE COURTS

Director of State Courts: JOHN VOELKER, 266-6828, john.voelker@

Interim Deputy Director for Court Operations: SHERYL GERVASI, 266-3121, sheryl.gervasi@

Deputy Director for Management Services: PAM RADLOFF, 266-8914, pam.radloff@

Consolidated Court Automation Programs: JEAN BOUSQUET, *director*, 267-0678, jean.bousquet@

Fiscal Officer: BRIAN LAMPRECH, 266-6865, brian.lamprech@

Judicial Education: DAVID H. HASS, *director*, 266-7807, david.hass@

Medical Malpractice Mediation System: RANDY SPROULE, *director*, 266-7711, randy.sproule@

Public Information Officer: AMANDA TODD, 264-6256, amanda.todd@

Legislative Liaison: vacancy, 266-6984.

Address e-mail by combining the user ID and the state extender: userID@wicourts.gov
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Mailing Address: Director of State Courts: P.O. Box 1688, Madison 53701-1688; Staff: 110 East Main Street, Madison 53703.

Location: Director of State Courts: Room 16 East, State Capitol, Madison; Staff: 110 East Main Street, Madison.

Fax: 267-0980.

Internet Address: <http://www.wicourts.gov>

Number of Employees: 122.25.

Total Budget 2001-03: \$30,099,800.

References: Wisconsin Statutes, Chapter 655, Subchapter VI, and Section 758.19; Supreme Court Rules 70.01-70.08.

Responsibility: The Director of State Courts administers the nonjudicial business of the Wisconsin court system and informs the chief justice and the supreme court about the status of judicial business. The director is responsible for supervising state-level court personnel; developing the court system's budget; and directing the courts' work on legislation, public information, and information systems. This office also controls expenditures; allocates space and equipment; supervises judicial education, interdistrict assignment of active and reserve judges, and planning and research; and administers the medical malpractice mediation system.

The director is appointed by the supreme court from outside the classified service. The position was created by the supreme court in orders, dated October 30, 1978, and February 19, 1979. It replaced the administrative director of courts, which had been created by Chapter 261, Laws of 1961.

STATE LAW LIBRARY

State Law Librarian: JANE COLWIN, 261-2340, jane.colwin@courts.state.wi.us

Deputy Law Librarian: JULIE TESSMER, 261-7557, julie.tessmer@courts.state.wi.us

Mailing Address: P.O. Box 7881, Madison 53707-7881.

Location: 120 Martin Luther King, Jr. Blvd., 2nd Floor, Madison 53703.

Telephones: General Information and Circulation: 266-1600; Reference Assistance: 267-9696; Toll-free: (800) 322-9755.

Fax: 267-2319.

Internet Address: <http://wsll.state.wi.us>

Reference E-mail Address: wsll.ref@courts.state.wi.us

Publications: *WSLL @ Your Service* (e-newsletter) at <http://wsll.state.wi.us/news.html>

Number of Employees: 16.25.

Total Budget 2001-03: \$4,848,400.

References: Wisconsin Statutes, Section 758.01; Supreme Court Rule 82.01.

Responsibility: The State Law Library is a public library open to all citizens of Wisconsin. It serves as the primary legal resource center for the Wisconsin Supreme Court and Court of Appeals, the Department of Justice, the Wisconsin Legislature, the Office of the Governor, executive agencies, and members of the State Bar of Wisconsin. The library is administered by the supreme court, which appoints the library staff and determines the rules governing library use. The library acts as a consultant and resource for county law libraries throughout the state. Milwaukee County and Dane County contract with the State Law Library for management and operation of their courthouse libraries (the Milwaukee Legal Resource Center and the Dane County Law Library).

The library's 150,000-volume collection features session laws, statutory codes, court reports, administrative rules, legal indexes, and case law digests of the U.S. government, all 50 states and U.S. territories. It also includes selected documents of the federal government, legal and bar periodicals, legal treatises, and legal encyclopedias. The library also offers reference, basic legal research, and document delivery services. The collection circulates to judges, attorneys, legislators, and government personnel.

OFFICE OF LAWYER REGULATION

Board of Administrative Oversight: W.H. LEVIT, JR. (lawyer), *chairperson*; ANN USTAD SMITH (lawyer), *vice chairperson*; BURNEATTA L. BRIDGE, DENNIS R. CIMPL, TRUMAN Q. McNULTY, JAMES W. MOHR, JR., SCOTT ROBERTS, DEBORAH M. SMITH (lawyers); CLAIRE FOWLER, KRISTA L. GINGER, T. JAMES KENNEDY, MICHAEL J. O'NEILL (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: JAMES D. WICKHEM (lawyer), *chairperson*; JAMES D. FRIEDMAN (lawyer), *vice chairperson*; MICHAEL ANDERSON, WAYNE A. ARNOLD, THOMAS W. BERTZ, JOHN R. DAWSON, KARRI L. FRITZ-KLAUS, BERNARD T. McCARTAN, FRANK D. REMINGTON (lawyers); MICHAEL S. ARIENS, STEVEN K. GJERDE, JOAN GREENDEER-LEE, M. TAMBURA OMOIELE, THOMAS RADMER (nonlawyers). (All members are appointed by the supreme court.)

Special Preliminary Review Panel: KARA M. BURGOS, JAMES G. POURIOS, JANE C. SCHLICHT, PAUL R. VAN GRUNSVEN (lawyers); DENNIS B. GORDER, DEAN HELSTAD, DARLO WENTZ (nonlawyers). (All members are appointed by the supreme court.)

Sixteen District Committees (all members are appointed by the supreme court):

District 1 Committee (serves Jefferson, Kenosha, and Walworth Counties): FREDERICK ZIEVERS (lawyer), *chairperson*; PHILLIP GODIN (lawyer), *vice chairperson*; PAUL GAGLIARDI, RANDALL R. GARCZYNSKI, NEIL F. GUTTORMSEN, JOHN P. HIGGINS, RICHARD C. KELLY, EDWARD F. THOMPSON, MATTHEW S. VIGNALI (lawyers); PAUL G. ALDIGE, CHERYL FRIEDL, GAIL GENTZ, JOHN WAMBOLDT (nonlawyers).

District 2 Committee (serves Milwaukee County): KENAN J. KERSTEN (lawyer), *chairperson*; GRACE MASSON (lawyer), *vice chairperson*; KATHRYN BACH, EMILE BANKS, THOMAS A. CABUSH, DONALD J. CHRISTL, MARGARETTE M. DEMET, JOHN DeSTEFANIS, THOMAS L. FRENN, LORI GENDELMAN, JOHN GERMANOTTA, MARIO GONZALES, JAMES W. GREER, EDWARD A. HANNAN, VICTOR C. HARDING, THEODORE HODAN, ANNE BERLEMAN KEARNEY, NANCY MEISSNER KENNEDY, R. JEFFREY KRILL, CATHERINE LaFLEUR, KATHLEEN ORTMAN MILLER, MARK B. POLLACK, JANICE RHODES, CLAYTON L. RIDDLE, SHERYL A. ST. ORES, MICHAEL STEINLE, TIMOTHY S. TRECEK, KATHERINE WILLIAMS (lawyers); NEILAND COHEN, DONALD G. DORO, PATRICK DOYLE, SHEL GENDELMAN, JOHN HANLON, RICHARD SILBERMAN, VICTORIA L. TOLIVER, HENRY H. UHLEIN (nonlawyers).

District 3 Committee (serves Fond du Lac, Green Lake, and Winnebago Counties): ALYSON ZIERDT (lawyer), *chairperson*; DAVID J. COLWIN (lawyer), *vice chairperson*; NICHOLAS A. CASPER, RONALD P. HAMMER, MILTON D. SCHIERLAND, JR., WILLIAM R. SLATE, LUDWIG L. WURTZ (lawyers); RONALD A. DETJEN, JOHN FAIRHURST, MARTIN F. FARRELL, SHARON MIKKELSEN, KAREN SCHNEIDER (nonlawyers).

District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties): GARY BENDIX (lawyer), *chairperson*; THOMAS S. BURKE, DAVID GASS, RALPH F. HERLACHE, RANDALL J. NESBITT, JAMES UNGRODT, RUSSELL VAN SKIKE (lawyers); ERIKA S. DALEBROUX, ROBERT A. DOBBS, V. ALAN WHITE (nonlawyers).

District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties): MICHAEL CHAMBERS (lawyer), *chairperson*; BRUCE BROVOLD, JAMES G. CURTIS, JAMES P. CZAJKOWSKI, KRISTIN GOEDERT, ROBERT HAGNESS, RALPH OSBORNE, JR., GEORGE PARKE III, J. DAVID RICE, FRANK R. VAZQUEZ (lawyers); SHEILA GARRITY, JAMES W. GEISSNER, DIANNE R. MORRISON, JOHN PARKYN, LINDA LEE SONDRAL (nonlawyers).

District 6 Committee (serves Waukesha County): GARY KUPHALL (lawyer), *chairperson*; RICHARD A. CONGDON, LINDA C. DE LA MORA, CHERYL A. GEMIGNANI, JEFFREY N. GINGOLD, MICHAEL T. MAHONEY, ROD W. ROGAHN, WILLIAM A. SWENDSON (lawyers); DENNIS R. BLASIUS, JULIE DEYOUNG, CARLA FRIEDRICH, ROBERT V. PURTOCK, DENNIS M. WALLER (nonlawyers).

District 7 Committee (serves Adams, Columbia, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara, and Wood Counties): RICHARD WEYMOUTH (lawyer), *chairperson*; MARC BICKFORD, MARK ILTEN, GARY KRYSHAK, JEROME P. MERCER, JOSEPH VINEY (lawyers); ELLEN M. DAHL, DONALD STEIN, JAMES E. STRASSER (nonlawyers).

District 8 Committee (serves Dunn, Eau Claire, Pierce, and St. Croix Counties): WARREN W. WOOD (lawyer), *chairperson*; TERRENCE GHERTY, THOMAS J. GRAHAM, JR., DOUGLAS M. JOHNSON, JANE E. LOKKEN, JAMES REMINGTON, KEITH RODLI, JAMES D. RYBERG, WILLIAM THEDINGA, BEVERLY WICKSTROM (lawyers); PAUL OESTERREICHER, JOHN H. SCHULTE, KURT W. WOOD, JANE SMANDA ZELLER (nonlawyers).

District 9 Committee (serves Dane County): NANCY C. WETTERSTEN (lawyer), *chairperson*; WILLIAM F. BAUER, JANICE N. BENSKE, MARK F. BURNS, WALTER DICKEY, BRUCE F. EHLKE, MAUREEN MCGLYNN FLANAGAN, PETER E. HANS, RICHARD B. JACOBSON, JAMES R. JANSEN, KAREN JULIAN, MARSHA MANSFIELD, KATHLEEN REILEY, HENRY REUL, DENNIS E. ROBERTSON, LAURI ROMAN, AMY R. SMITH, TODD G. SMITH, ALISON TENBRUGGENCATE, MICHAEL WEIDEN, THOMAS J. ZAREMBA (lawyers); NINA PETROVICH BARTELL, CHARLES A. BUNGE, DAVID CHARLES DIES, PAUL M. DOWNEY, SABRINA GENTILE, R.C. HECHT, ROBERT C. HODGE, JUDITH A. MILLER, ELLEN PRITZKOW (nonlawyers).

District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties): RICHARD THOMAS ELROD, JAMES N. MIRON, THOMAS SCHWABA (lawyers); RAYMOND ZAGORASKI (nonlawyer).

District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties): TIMOTHY DOYLE (lawyer), *chairperson*; JOHN P. ANDERSON, JOSEPH CRAWFORD, STEVEN CRAY, RICHARD GONDIK, JR., JOHN C. GRINDELL, GUY T. LUDVIGSON, FORREST O. MAKI, DANIEL F. SNYDER, KATHERINE M. STEWART, PAUL A. STURGUL (lawyers); JAMES CRANDELL, ELEANORA T. TRIBYS (nonlawyers).

District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties): F. MARK BROMLEY (lawyer), *chairperson*; CRAIG DAY, DAVID B. FEINGOLD, DERRICK A. GRUBB, STEPHEN O. HART, WILLIAM T. HENDERSON, RAY JABLONSKI, GAYLE BRANAUGH JEBBIA, PETER KELLY, PATRICK K. McDONALD, DALE POPE, ERIC D. REINICKE, MARGERY MEBANE TIBBETTS (lawyers); DALE E. ANDERSON, LYNN L. CHURCH, ANN E. HAGLUND, DONALD C. HOLLOWAY, MICHAEL F. METZ, THERON E. PARSONS IV, KATHLEEN J. ROELI, JOHN SIMONSON (nonlawyers).

District 13 Committee (serves Dodge, Ozaukee, and Washington Counties): WILLIAM F. ALDERSON, JR. (lawyer), *chairperson*; WILLIAM BUCHHOLZ, LISA L. DERR, PAUL DIMICK, GARY R. SCHMAUS (lawyers); DEBORAH L. LUKOVICH, ALAN MARTENS, JOHN C. RALSTON (nonlawyers).

District 14 Committee (serves Brown County): SANDRA L. HUPFER (lawyer), *chairperson*; LAURA J. BECK, JOHN C. HUEGEL, JEFFREY F. JAEKELS, BETH RAHMIG PLESS, SUSAN J. REIGEL, RALPH J. TEASE, JR., CYNTHIA CAINE RELEVEN, FRANK S. WOCHOS (lawyers); GREGORY L. GRAF, GEORGE KREMPIN, WILLIAM MALOOLY, KIM E. NIELSEN (nonlawyers).

District 15 Committee (serves Racine County): JOSEPH J. MURATORE, JR. (lawyer), *chairperson*; TIMOTHY D. BOYLE, THOMAS M. DEVINE, JOHN W. FOLEY, SCOTT W. FRENCH, SALLY HOELZEL, DANIEL J. KELLEY, MICHAEL J. KELLY, MARK LUKOFF, CYNTHIA L. MURPHY, JOHN BARRY STUTT (lawyers); GILBERT G. BAUMANN, JOHN P. CRIMMINGS, CONNIE CROWDER, RAYMOND G. FEEST (nonlawyers).

District 16 Committee (serves Forest, Florence, Langlade, Lincoln, Marathon, Oneida, and Vilas Counties): JOHN DANNER (lawyer), *chairperson*; DANIEL DAUBERT, CHRISTINE R.H. OLSEN, COLIN PIETZ, SARA RUDOLPH RUFFI, WILLIAM SCHROEDER, FRANCIS U. SEROOGY, JEROME TLUSTY, ROBERT W. ZIMMERMAN (lawyers); THOMAS E. BURG, CHERYL DAVIS, JUDY A. FRYMARK, TOM LONSDORF (nonlawyers).

Office of Lawyer Regulation: KEITH L. SELLEN, *director*, keith.sellen@courts.state.wi.us; JOHN O'CONNELL, *deputy director*, john.oconnell@courts.state.wi.us

Telephone: 267-7274; Central Intake toll-free (877) 315-6941.

Fax: 267-1959.

Mailing Address: 110 E. Main Street., Suite 315, Madison 53703-3383.

Number of Employees: 25.50.

Total Budget 2001-03: \$3,466,800.

References: Supreme Court Rules, Chapters 21 and 22.

Responsibility: The Office of Lawyer Regulation was created by order of the supreme court, effective October 1, 2000, to assist the court in fulfilling its constitutional responsibility to supervise the practice of law and protect the public from professional misconduct by members of the State Bar of Wisconsin. This agency assumed the attorney disciplinary functions that had previously been performed by the Board of Attorneys Professional Responsibility and, prior to January 1, 1978, by the Board of State Bar Commissioners.

The director of the Office of Lawyer Regulation is appointed by the supreme court and must be admitted to the practice of law in Wisconsin no later than six months following appointment. The Board of Administrative Oversight and the Preliminary Review Committee perform oversight and adjudicative responsibilities under the supervision of the supreme court.

The Board of Administrative Oversight consists of 12 members, eight lawyers and four nonlawyers. Board members are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms. The board monitors the overall system for regulating lawyers but does not handle actions regarding individual complaints or grievances. It reviews the "fairness, productivity, effectiveness and efficiency" of the system and reports its findings to the supreme court. After consultation with the director, it proposes the annual budget for the agency to the supreme court.

The Office of Lawyer Regulation receives and evaluates all complaints, inquiries, and grievances related to attorney misconduct or medical incapacity. The director is required to investigate any grievance that appears to support an allegation of possible attorney misconduct, and the attorney in question must cooperate with the investigation. District investigative committees are appointed in the 16 State Bar districts by the supreme court to aid the director in disciplinary investigations, forward matters to the director for review, and provide assistance when grievances can be settled at the district level.

After investigation, the director decides whether the matter must be forwarded to a panel of the Preliminary Review Committee or may be dismissed or diverted for alternative action. This 14-member committee consists of nine lawyers and five nonlawyers, who are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms.

If a panel of the Preliminary Review Committee determines there is cause to proceed, the director may seek disciplinary action, ranging from private reprimand to filing a formal complaint with the supreme court that requests public reprimand, license suspension or revocation, monetary payment, or imposing conditions on the continued practice of law. An attorney may be offered alternatives to formal disciplinary action, including mediation, fee arbitration, law office management assistance, evaluation and treatment for alcohol and other substance abuse, psychological evaluation and treatment, monitoring of the attorney's practice or trust account procedures, continuing legal education, ethics school, or the multistate professional responsibility examination.

Formal disciplinary actions for attorney misconduct are filed by the director with the supreme court, which appoints a referee from a permanent panel of attorneys and reserve judges to hear discipline cases, make disciplinary recommendations to the court, and to approve the issuance of certain private and public reprimands. Referees conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for reinstatement. They make findings, conclusions, and recommendations and submit them to the supreme court for review and appropriate action. Only the supreme court has the authority to suspend or revoke a lawyer's license to practice law in the State of Wisconsin.

BOARD OF BAR EXAMINERS

Board of Bar Examiners: ERIC J. WAHL (circuit court judge), *chairperson*; JOHN O. OLSON (State Bar member), *vice chairperson*; JOSEPH D. KEARNEY (Marquette University Law School faculty); GLENN CARR, ROBERT J. JANSSEN, MARY BETH KEPPEL, CATHERINE M. ROTTIER (State Bar members); KEVIN M. KELLY (UW Law School faculty); CURTIS BRIESKE, DENNIS A. DANNER, HARRY MAIER (public members). (All members are appointed by the supreme court.)

Director: GENE R. RANKIN, 266-9760; Fax: 266-1196.

Mailing Address: 110 East Main Street, Room 715, Madison 53703.

E-mail Address: bbe@wicourts.gov

Internet Address: <http://www.wicourts.gov/bbe>

Number of Employees: 8.00.

Total Budget 2001-03: \$1,192,200.

References: Supreme Court Rules, Chapters 30, 31, and 40.

Responsibility: The 11-member Board of Bar Examiners manages all bar admissions by examination or by reciprocity; conducts character and fitness investigations of all candidates for admission to the bar, including diploma privilege graduates; and administers the Wisconsin mandatory continuing legal education requirement for attorneys.

The board originated as the Board of Continuing Legal Education, created in 1975 by rule of the Wisconsin Supreme Court. It became the Board of Attorneys Professional Competence in 1978 and was renamed the Board of Bar Examiners, effective January 1, 1991. Members are appointed for staggered 3-year terms, but no member may serve more than two consecutive full terms. The number of public members was increased from one to 3 by a supreme court order, effective January 1, 2001.

JUDICIAL COMMISSION

Members: PHILIP R. BREHM (State Bar member), *chairperson*; KATHRYN FOSTER (circuit court judge), *vice chairperson*; CHARLES P. DYKMAN (appeals court judge), HANNAH DUGAN (State Bar member); SPYRO CONDOS, TEE HEISER, CLIFFORD LECLEIR, ROGER REINEMANN, ILEEN SIKOWSKI (nonlawyers). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

Executive Director: JAMES C. ALEXANDER.

Administrative Assistant: ANN RASSBACH.

Mailing Address: 110 East Main Street, Suite 606, Madison 53703-3328.

Telephone: 266-7637.

Fax: 266-8647.

Agency E-mail: judcmm@wicourts.gov

Publication: Annual Report.

Number of Employees: 2.00.

Total Budget 2001-03: \$429,300.

Statutory References: Sections 757.81-757.99.

Responsibility: The 9-member Judicial Commission conducts investigations for review and action by the supreme court regarding allegations of misconduct or permanent disability of a judge or court commissioner. Members are appointed for 3-year terms but cannot serve more than two consecutive full terms.

The commission's investigations are confidential. If an investigation results in a finding of probable cause that a judge or court commissioner has engaged in misconduct or is disabled, the commission must file a formal complaint of misconduct or a petition regarding disability with the supreme court. Prior to filing a complaint or petition, the commission may request a jury hearing of its findings before a single appellate judge. If it does not request a jury hearing, the chief judge of the court of appeals selects a 3-judge panel to hear the complaint or petition.

The commission is responsible for prosecution of a case. After the case is heard by a jury or panel, the supreme court reviews the findings of fact, conclusions of law, and recommended disposition. It has ultimate responsibility for determining appropriate discipline in cases of misconduct or appropriate action in cases of permanent disability.

History: In 1972, the Wisconsin Supreme Court created a 9-member commission to implement the Code of Judicial Ethics it had adopted. The code enumerated standards of personal and official conduct and identified conduct that would result in disciplinary action. Subject to supreme court review, the commission had authority to reprimand or censure a judge.

A constitutional amendment approved by the voters in 1977 empowered the supreme court, using procedures developed by the legislature, to reprimand, censure, suspend, or remove any judge for misconduct or disability. With enactment of Chapter 449, Laws of 1977, the legislature created the Judicial Commission and prescribed its procedures. The supreme court abolished its own commission in 1978.

JUDICIAL CONDUCT ADVISORY COMMITTEE

Judicial Conduct Advisory Committee: JAMES EVENSON (judicial administrative district chief judge); PAUL LUNDSTEN (court of appeals judge); DENNIS P. MORONEY (circuit court or reserve judge serving in an urban area); GEORGE S. CURRY (circuit court or reserve judge serving in a rural area); DIANE NORMAN (municipal court judge); ARNOLD K. SCHUMANN (reserve judge); DAVID FLESCH (circuit court commissioner); FRANK R. TERSCHAN (attorney); ERIC GODFREY (public member). (All members are selected by the supreme court.)

Mailing Address: P.O. Box 1688, Madison 53701-1688.

Internet Address: http://www.wicourts.gov/supreme/sc_judcond.asp

Telephone: 266-6828.

Fax: 267-0980.

Reference: Supreme Court Rules, Chapter 60, Appendix.

Responsibility: The Wisconsin Supreme Court established the Judicial Conduct Advisory Committee as part of its 1997 update to the Code of Judicial Conduct. The committee gives formal advisory opinions and informal advice regarding whether actions judges are contemplating comply with the code. It also makes recommendations to the supreme court for amendment to the Code of Judicial Conduct or the rules governing the committee.

JUDICIAL CONFERENCE

Members: All supreme court justices, court of appeals judges, circuit court judges, reserve judges, 3 municipal court judges (designated by the Wisconsin Municipal Judges Association), 3 judicial representatives of tribal courts (designated by the Wisconsin Tribal Judges Association), one circuit court commissioner designated by the Family Court Commissioner Association, and one circuit court commissioner designated by the Judicial Court Commissioner Association.

References: Section 758.171, Wisconsin Statutes; Supreme Court Rule 70.15.

Responsibility: The Judicial Conference, which was created by the Wisconsin Supreme Court, meets at least once a year to recommend improvements in administration of the justice system, conduct educational programs for its members, and adopt forms necessary for the administration of certain court proceedings. Since its initial meeting in January 1979, the conference has devoted sessions to family and children's law, probate, mental health, appellate practice and procedures, civil law, criminal law, and traffic law. It also maintains a standing committee on legislation.

JUDICIAL COUNCIL

Members: MARLA J. STEPHENS (designated by state public defender), *chairperson*; RUTH ANN BACHMAN (designated by State Bar), *vice chairperson*; DAVID PROSSER, JR. (justice designated by supreme court); TED E. WEDEMEYER, JR. (judge designated by appeals court); JOHN VOELKER (interim director of state courts); JAMES MASON, GERALD C. NICHOL, EARL W. SCHMIDT, LEE WELLS (circuit judges designated by Judicial Conference); SENATOR ZIEN (chairperson, senate judicial committee); REPRESENTATIVE GUNDRUM (chairperson, assembly judicial committee); PEGGY LAUTENSCHLAGER (attorney general); BRUCE MUNSON (revisor of statutes); DAVID E. SCHULTZ (designated by dean, UW Law School); JAY GREINIG (designated by dean, Marquette University Law School); BETH HANAN (designated by president-elect, State Bar); JORGE GOMEZ, TIMOTHY VOCKE (designated by State Bar); vacancy (district attorney appointed by governor); SCOTT C. BAUMBACH, STEPHEN WILLET (public members appointed by governor).

Mailing Address: 110 East Main Street, Suite 606, Madison 53703.

Telephone: 266-7637.

Fax: 266-8647.

Statutory References: Sections 757.83 (4) and 758.13.

Responsibility: The Judicial Council, created by Chapter 392, Laws of 1951, assumed the functions of the Advisory Committee on Rules of Pleading, Practice and Procedure, created by the 1929 Legislature. The 21-member council is authorized to advise the supreme court and the legislature on any matter affecting the administration of justice in Wisconsin, and it may recommend legislation to change the procedure, jurisdiction, or organization of the courts. The council studies the rules of pleading, practice, and procedure and advises the supreme court about changes that will simplify procedure and promote a speedy disposition of litigation.

Several council members serve at the pleasure of their appointing authorities. The 4 circuit judges selected by the Judicial Conference serve 4-year terms. The 3 members selected by the State Bar and the 2 citizen members appointed by the governor serve 3-year terms. The executive director of the Judicial Commission provides staff services to the council.

JUDICIAL EDUCATION COMMITTEE

Judicial Education Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; MARGARET J. VERGERONT (designated by appeals court chief judge); JOHN VOELKER (interim director of state courts); KAREN E. CHRISTENSON, ROBERT E. EATON, THOMAS T. FLUGAUR, DONALD J. HASSIN, ROBERT G. MAWDSLEY, RALPH M. RAMIREZ, WILLIAM C. STEWART, JR., ANNETTE K. ZIEGLER (circuit court judges appointed by supreme court); KENNETH B. DAVIS, JR. (dean, UW Law School); JOSEPH KEARNEY (dean, Marquette University Law School).

Office of Judicial Education: DAVID H. HASS, *director*, david.hass@wicourts.gov

Mailing Address: Office of Judicial Education, 110 East Main Street, Room 200, Madison 53703.

Telephone: 266-7807.

Fax: 261-6650.

E-mail Address: JED@wicourts.gov

Internet Address: <http://www.wicourts.gov/education>

Reference: Supreme Court Rules 32-33, 75.05.

Responsibility: The 13-member Judicial Education Committee approves educational programs for judges and court personnel. The 8 circuit court judges on the committee serve staggered 2-year terms and may not serve more than two consecutive terms.

In 1976, the supreme court issued Chapter 32 of the Supreme Court Rules, which established a mandatory program of continuing education for the Wisconsin judiciary, effective January 1, 1977. This program applies to all supreme court justices and commissioners, appeals court judges and staff attorneys, circuit court judges, and reserve judges. Each person subject to the rule must obtain a specified number of credit hours of continuing education within a 6-year period. The Office of Judicial Education, which the supreme court established in 1971, administers the program. It also sponsors initial and continuing educational programs for municipal judges and circuit court clerks.

PLANNING AND POLICY ADVISORY COMMITTEE

Planning and Policy Advisory Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; WILLIAM M. MCMONIGAL (circuit court judge elected by judicial administrative districts), *vice chairperson*; DANIEL ANDERSON (appeals court judge selected by court), *secretary*; CARL ASHLEY, JAMES T. BAYORGEON, MICHAEL O. BOHREN, RODERICK CAMERON, JEFFREY CONEN, DAVID FLANAGAN, BONNIE GORDON, FRED H. HAZLEWOOD, ROBERT E. KINNEY, EDWARD E. LEINWEBER, DIANE NICKS, ALLAN P. TORHORST (circuit court judges elected by judicial administrative districts); MICHAEL C. HURT (municipal judge elected by Wisconsin Municipal Judges Association); HANNAH C. DUGAN, JOHN WALSH (selected by state bar Board of Governors); JAMES DWYER (nonlawyer, elected county official); OSCAR BOLDT, JOHN KAMINSKI (nonlawyers); MICHAEL TOBIN (public defender); SCOTT JOHNSON (court administrator); JOHN ZAKOWSKI (prosecutor); BERNADETTE FLATOFF (circuit court clerk). (Unless indicated otherwise, members are appointed by the chief justice.)

Planning Subcommittee: DANIEL P. ANDERSON (appeals court judge); JAMES T. BAYORGEON, GARY L. CARLSON, MICHAEL NOWAKOWSKI, RICHARD J. SANKOVITZ (circuit court judges); KATHLEEN MURPHY (court administrator); CAROLYN OLSON (circuit court clerk); RICHARD SWANTZ, SHIRLEY S. ABRAHAMSON (supreme court chief justice), WILLIAM M. MCMONIGAL (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), JOHN VOELKER (interim director of state courts) (*ex officio* members).

Staff Policy Analyst: DAN WASSINK, dan.wassink@wicourts.gov

Mailing Address: 110 East Main Street, Room 410, Madison 53703.

Telephone: 266-8861.

Fax: 267-0911.

Internet Address: <http://www.wicourts.gov/global/reports/planning&policy.html>

Reference: Supreme Court Rule 70.14.

Responsibility: The 25-member Planning and Policy Advisory Committee advises the Wisconsin Supreme Court and the Director of State Courts on planning and policy and assists in a continuing evaluation of the administrative structure of the court system. It participates in the budget process of the Wisconsin judiciary and appoints a subcommittee to review the budget of the court system. The committee meets at least quarterly, and the supreme court meets with the committee annually. The Director of State Courts participates in committee deliberations, with full floor and advocacy privileges, but is not a member of the committee and does not have a vote.

This committee was created in 1978 as the Administrative Committee of the Courts and renamed the Planning and Policy Advisory Committee in December 1990.

WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

STATE BAR OF WISCONSIN

Board of Governors (effective July 1, 2003): *Officers*: R. GEORGE BURNETT, *president*; MICHELLE A. BEHNKE, *president-elect*; PATRICIA K. BALLMAN, *past president*; PAMELA PEPPER, *secretary*; DEAN R. DIETRICH, *treasurer*; GRANT F. LANGLEY, *chair of the board*. *District members*: MARGARET AGUAYO ASTERLIN, GRANT E. BIRTCH, JAMES M. BRENNAN, BARBARA L. BURBACH, KENT I. CARNELL, JOHN L. CATES, MICHAEL R. CHRISTOPHER, GWENDOLYN G. CONNOLLY, DIANE S. DIEL, WILLIAM J. DOMINA, JAMES L. DUNLAP, WILLIAM F. FALE, NATHAN A. FISHBACH, G. JEFFREY GEORGE, ROBERT R. GOEPEL, D. MICHAEL GUERIN, JOHN W. HEIN, RICHARD E. HEMMING, SUSAN V. KELLEY, KENNETH A. KNUDSON, JOHN P. MACY, DONALD E. MAYEW, PEGGY L. MILLER, JOHN F. O'MELIA, JR., JAMES G. POURIOS, JAMES T. QUINN, ELAINE E. RICHARDS, DEBORAH M. SMITH, CHRISTOPHER J. STAWSKI, ROBERT W. SWAIN, JR., MARY E. TRIGGIANO, R. MICHAEL WATERMAN, NICHOLAS C. ZALES, *vacancy*. *Young Lawyers Division*: ROBERT D. EBBE. *Government Lawyers Division*: LINDA U. BURKE. *Nonresident Lawyers Division*: PAUL E. CONRAD, BENTON C. STRAUSS, ALBERT E. WEHDE. *Senior Lawyers Division*: G. LANE WARE. *Nonlawyer members*: ANDREA-TERESA ARENAS, YVONNE D. FEAVEL, GREGORY H. SACIA.

Executive Director: GEORGE C. BROWN.

Mailing Address: P.O. Box 7158, Madison 53708-7158.

Location: 5302 Eastpark Boulevard, Madison.

Internet Address: <http://www.wisbar.org>

Telephones: General: 257-3838; Lawyer Referral and Information Service: (800) 362-9082.

Agency E-mail: drossmiller@wisbar.org

Publications: *Consumer's Guide to Wisconsin Law*; *A Handbook for Personal Representatives*; *Wisconsin Lawyer*; *Wisconsin News Reporter's Legal Handbook*; various brochures, pamphlets, and videotapes.

References: Supreme Court Rules, Chapters 10 and 11.

Responsibility: The State Bar of Wisconsin is an association of persons authorized to practice law in Wisconsin. It works to raise professional standards, improve the administration of justice, and provide continuing legal education to lawyers. The State Bar conducts legal research in substantive law, practice, and procedure and develops related reports and recommendations. It also maintains the roll of attorneys, collects mandatory assessments for supreme court boards, and performs other administrative services for the judicial system.

Attorneys may be admitted to the State Bar by the full Wisconsin Supreme Court or by a single justice. Members are subject to the rules of ethical conduct prescribed by the supreme court, whether they practice before a court, an administrative body, or in consultation with clients whose interests do not require court appearances.

Organization: Subject to rules prescribed by the Wisconsin Supreme Court, the State Bar is governed by a board of governors, of not fewer than 49 members, consisting of the board's 6 officers, not fewer than 34 members selected by State Bar members from the association's 16 districts, 6 selected by divisions of the State Bar, and 3 nonlawyers appointed by the supreme court. The board of governors selects the executive director and the president of the board.

History: In 1956, the Wisconsin Supreme Court ordered the organization of the State Bar of Wisconsin, effective January 1, 1957, to replace the formerly voluntary Wisconsin Bar Association, organized in 1877. All judges and attorneys entitled to practice before Wisconsin courts were required to join the State Bar. Beginning July 1, 1988, the Wisconsin Supreme Court suspended its mandatory membership rule, and the State Bar temporarily became a voluntary membership association, pending the disposition of a lawsuit in the U.S. Supreme Court. The Supreme Court ruled in *Keller v. State Bar of California*, 496 U.S. 1 (1990) that it is permissible to mandate membership provided certain restrictions are placed on the political activities of the mandatory State Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

SUMMARY OF SIGNIFICANT DECISIONS OF THE WISCONSIN SUPREME COURT AND COURT OF APPEALS

October 2000 – April 2003

Robert Nelson, Mike Dsida, and Mary Gibson-Glass
Legislative Reference Bureau

CONSTITUTIONAL LAW

Denial of Trial Procedure to Contest Property Assessments

In *Nankin v. Village of Shorewood*, 245 Wis. 2d 86, 2001 WI 92 (2001), the court was asked to decide the constitutionality of a statutory provision that allowed persons in counties with populations under 500,000 to contest a property assessment determination by a local board by having a full trial in the circuit court but denied that circuit court trial procedure to persons living in counties with populations of 500,000 or more. The plaintiff was a trustee for property located in Milwaukee County who wanted to challenge a local board of review determination of his tax assessment. He sought a declaratory judgment that the statute was in violation of the equal protection clauses of the state and federal constitutions because he was denied access to a judicial review of the board's determination through a full new trial on the merits. Instead, in Milwaukee County, the statutes allow a court to review the record of the board's hearing and make a decision based on that record and the briefs submitted by the parties. The circuit court and court of appeals denied declaratory relief to the plaintiff.

The court noted that statutes are presumed to be constitutional and the burden is on the person challenging the statute to prove beyond a reasonable doubt that the statute is unconstitutional. To determine that a statute is unconstitutional on an equal protection basis, the court held that the plaintiff must show that the statute creates a distinct class, treats that class significantly different from all others similarly situated, and there is no rational basis for the classification.

In this case, the court reviewed the procedure established for determining the assessment of property for tax purposes, which includes three separate appeal options. Two of the options allow the challenger to ask the circuit court to review the decision of the board of review by certiorari, which limits the review to the record and evidence presented at the board's hearing, while the third option allows the challenger to have a new trial at the circuit court level, which includes calling witnesses and presenting testimony. In a certiorari review, the reviewing court may not conduct its own factual inquiry, may not admit any new evidence, and must uphold the board's decision if the board's action was not arbitrary or unreasonable, represented the board's judgment rather than its will, and was supported by any reasonable view of the evidence. Because of the limited time allowed to request a hearing before a board of review and the fact that only the board can call witnesses and take testimony, the court noted that the option of a full trial provides the challenger with a better chance to prepare his or her case.

Based on the differences between the two options available to persons in counties with populations of 500,000 or more and the three options available to persons in counties with populations of less than 500,000, the court concluded that the statutes create distinct classes which are treated differently, depending on the county in which the property is located.

The court then determined if a rational basis existed for this disparate treatment by county. The court listed the five criteria that must be satisfied to find that a statutory classification is rational: that the classification is based upon substantial distinctions, is germane to the purpose of the law, is not based upon existing circumstances to preclude additions to the members of the class, applies equally to each class member, and creates classes whose characteristics suggest the propriety of having substantially different legislation.

The court held that three of the five criteria are not met in this case. The court recognized that county population had been approved in the past as a method of classification, but in this case:

There is nothing inherent about populous counties to justify the classification in the statute that restricts the manner in which owners of property located in such counties may

challenge their assessments. Populous counties do not afford any additional means to address property assessments such that a Wis. Stat. s. 74.37 action is unnecessary in such counties. Moreover, populous counties do not present any special problems or concerns such that it is rational to restrict such circuit court actions in populous counties. (page 112)

The court held that the classification is not germane to the purpose of the law because assessments are done at the municipal level and there is no justification for using county population in legislation that is based on a municipal function. Finally, the court found that there were not any differences in situations or circumstances between properties located in a populous county and those in a less populous county that would necessitate different methods of challenging an assessment.

The court went on to determine that the statutory section that creates the unconstitutional classification can be separated from the rest of the statute without making the law inoperative, so the court struck down only that particular statutory section.

Personal Jurisdiction of Wisconsin Courts Over Foreign Companies

This case, *Kopke v. A. Hartrodt S.R.L.*, 245 Wis. 2d 396, 2001 WI 99 (2001), concerns the right of the Wisconsin courts to establish personal jurisdiction over an Italian company that packed paper into containers that were then shipped to a Wisconsin corporation. When one of the containers was opened in Wisconsin, a pallet loaded with paper fell out of the container and severely injured the plaintiff. The plaintiff sued the producer of the paper and the company that packed the paper into the container, both Italian companies. The company that packed the paper asked to be dismissed from the suit because the court did not have personal jurisdiction over that company. The circuit court denied that request and the case was certified to the supreme court by the court of appeals.

The Italian company argued that the Wisconsin court did not have jurisdiction over it under the state's long-arm statute, which specifies when a Wisconsin court may obtain personal jurisdiction over a person not residing in this state. In addition, the defendant argued that the Wisconsin court's exercise of personal jurisdiction violated the due process requirements of the state and federal constitutions.

The court first reviewed the long-arm statutory provision that provides that personal jurisdiction may exist if a plaintiff is injured within this state as the result of an act or omission by a person outside the state if that person is involved in products, materials, or things that were processed, serviced, or manufactured and used or consumed within this state. The court decided that the disputed issue regarding this statute is whether the word "processed" includes the packing of the paper in containers for transit. The court noted that "processed" is not defined in the statute, so the court is required to ascertain and give effect to the intention of the legislature, and, because the word is not defined, to look to dictionaries to determine the common and approved usage of the word "processed". The history of the long-arm statutory provision indicates that the legislature intended to expand personal jurisdiction. The court said this is consistent with the court's statements that statutes regulating long-arm jurisdiction should be given liberal construction in favor of the exercise of jurisdiction. The defendant attempted to convince the court to look at other statutes that use the word "process" and derive the meaning of that word from those statutes. The court said this distorts, rather than clarifies, the meaning, and would only be appropriate if the other statutes are closely related to the one in question, which is not true in this case.

The court then discussed the constitutional issue of whether subjecting the defendant to the jurisdiction of the Wisconsin courts violates the defendant's due process rights. To meet due process requirements, two criteria must be met. First, the defendant must have purposefully established minimum contacts in Wisconsin. Second, the assertion of personal jurisdiction over the defendant should comport with fair play and substantial justice.

As to the first test, the court said that the court must determine if the defendant's contact with the state would result in the defendant's reasonable anticipation that he would be haled into Wisconsin courts. In addition, the court held that it must look to determine, based on federal case law, which applies to due process cases in Wisconsin, if the defendant was part of the stream of commerce that resulted in products being used in this state. Under this theory, said the court, if a partic-

ipant in the flow of a product from manufacturer to consumer is aware that the product will be marketed in this state, the possibility that a lawsuit may result in this state is not a surprise.

In this case, the defendant loaded cargo containers under instructions that identified the destination as Neenah or Appleton. The evidence showed that at least 40 containers were so loaded by the defendant over a one-year period. In addition, the defendant benefited from the distribution of products that were loaded and placed in the stream of commerce and that resulted in them arriving in Wisconsin. The defendant, said the court, played a hand in the product arriving in this state. Based on these facts, the court held that the defendant had sufficient minimum contacts with the state to be held accountable for its negligence in this state's courts.

The court went on to consider the issue of whether subjecting the defendant to our courts meets the standard of fair play and substantial justice, and concluded that it did. The court relied on the five factors established by the U.S. Supreme Court to determine if personal jurisdiction is reasonable in this situation: the forum's interest in adjudicating the matter, the plaintiff's interest obtaining relief, the burden on the defendant, the judicial system's interest in obtaining efficient resolution of controversies, and the shared interest in the states in furthering fundamental social policies. The court summarily decided that the state has an unquestioned interest in providing a forum for its citizens and that the plaintiff has an undeniable interest in obtaining convenient relief for his damages.

As to the burden on the defendant, the court reviewed numerous cases cited by the defendant and recognized that the defendant is located outside the United States and would be required to defend itself in a foreign judicial system. But, the court found that the defendant was involved with numerous transactions that resulted in products being shipped to Wisconsin, not just in one random situation, as some of the defendants in cases the defendant cited. The court went on to hold that the defendant did not make a compelling case that other considerations make the exercise of jurisdiction unreasonable, so the court affirmed the circuit court and denied the defendant's request to be dismissed as a party defendant.

A dissenting opinion disagreed with the majority's opinion that the defendant had the requisite minimum contacts with the state. In this case, the only contact the defendant had was with the Italian company that contracted to package paper in containers in Italy. The defendant, said the dissent, did not have any notice that it would be subject to the Wisconsin courts, since the language for the packaging only stated "Neenah" or "Appleton", and as the defendant pointed out, there are three Neenahs, two dozen Appletons, and numerous companies with the initials "CTI" in the United States. Nowhere is there a reference to "Wisconsin" in the shipping information provided to the defendant.

A second dissent said that the majority should have held that the phrase "processing" as used in our statute clearly includes the packaging, bracing, and securing of the paper in the containers. The second dissent agreed with the first dissent that although the requirements of the long-arm statute were met in this case, the requirements of due process were not, which should have led to a dismissal.

Wisconsin Supreme Court Jurisdiction Over Legislative Redistricting

In this case, *Jensen v. Wisconsin Elections Board*, 249 Wis. 2d 706, 2002 WI 13 (2002), the Wisconsin Assembly and Senate Republican Party leadership asked the court's permission to commence an original action in the state supreme court on the issue of legislative redistricting. The Democratic Party leadership of both houses and others were permitted to intervene and submit briefs on the question of the court taking original jurisdiction. The petitioners asked the court to declare the existing legislative districts constitutionally invalid due to population shifts evidenced by the 2000 census. Claiming a legislative impasse, they asked the court to redraw those legislative districts. The intervenors opposed the court's assumption of original jurisdiction because the federal court in Milwaukee had already taken jurisdiction of legislative redistricting in Wisconsin.

This case, said the court, raises important state and federal legal and political issues. In the absence of a timely legislative redistricting, the supreme court could participate in the resolution of this issue. Citing federal supreme court cases, the court stated that congressional reapportionment and state legislative redistricting are primarily state, not federal, prerogatives. Although both federal and state courts have concurrent jurisdiction to decide federal and state constitutional

issues of equal protection presented by redistricting litigation, according to the court, the state's role is primary.

The court went on to express their preference for the legislature to develop its own legislative districts, but recognized that the court must become involved when asked if legislative redistricting results in unequal representation of citizens in violation of the constitution.

Despite the reality that redistricting is now almost always resolved through litigation rather than legislation, we are moved to emphasize the obvious: redistricting remains an inherently political and legislative – not judicial – task. Courts called upon to perform redistricting are of course, *judicially legislating*, that is, *writing* the law rather than *interpreting* it, which is not their usual – and usually not their proper – role. (page 713)

The court noted that the next election season begins in about three and a half months, yet neither the assembly or senate have submitted a legislative redistricting bill. Instead, said the courts, in anticipation of legislative gridlock, a group of citizens commenced a congressional reapportionment lawsuit in federal court over a year ago. That action has been amended to include state legislative redistricting and the parties to this request for original jurisdiction are also parties in that lawsuit. The court found that the three-judge panel in the federal lawsuit has established a schedule that includes discovery, pretrial submissions, and a trial date, including dates for submission of briefs, maps, motions, and witness lists. The federal courts are required, said the court, to defer to state legislative or judicial consideration of redistricting, but that deference does not require abstention by the federal court. In fact, even if the state legislature or court develops a plan for redistricting, the plan is subject to federal court review to determine compliance with federal law.

Given that the federal court has already been asked to consider redistricting plans, the court finds that if it accepts original jurisdiction at this time that acceptance would undermine the principals of cooperative federalism and federal-state comity, and would result in unjustifiable duplication of effort and expense. In addition, the court said that simultaneous separate efforts by the state and federal courts would engender conflict and uncertainty regarding the validity of the plans produced by each court. Moreover, the court noted that its original jurisdiction procedures would have to be modified to act as a trial court in this case, something that would take time when time is of the essence because the next election was only a few months away.

The court held that although the state is primary in the matter of legislative redistricting, the timing and circumstances in this case do not allow it to responsibly exercise original jurisdiction. The court denied the petitioner's request for original jurisdiction. The court also decided to undertake a rulemaking proceeding regarding procedures for original jurisdiction in redistricting cases to avoid a similar situation in the future.

CRIMINAL LAW

Narrowing the Exclusionary Rule

Beginning in 1923, Wisconsin courts have adhered to an exclusionary rule that bars the admission of evidence in criminal cases if that evidence was obtained through an unconstitutional search. But in *State v. Eason*, 2001 WI 98, 245 Wis. 2d 206 (2001), the supreme court created an exception to that rule, permitting the use of such evidence if the police acted in reasonable reliance on a search warrant issued by a neutral magistrate.

In this case, a City of Beloit police officer applied for a warrant to authorize the police to search an apartment which the officer believed was being used to sell drugs. The officer submitted an affidavit in support of that application. In his affidavit, the officer also requested that the police be authorized to enter the apartment without knocking. A Rock County court commissioner granted the request and issued a “no-knock” warrant. Several days later, the police broke down the apartment door and entered the apartment, where they found Eason, his aunt, four other adults, and two small children. One of the officers saw Eason and his aunt run down a short hallway to the kitchen, where two other officers apprehended them. One of those officers found cocaine on the floor of the hallway through which Eason and his aunt had run, although he did not see how it got there.

The state charged Eason with possessing cocaine with intent to deliver it within 1,000 feet of a school zone. Eason asked the court not to admit evidence relating to the cocaine, arguing that

the no-knock aspect of the search was unconstitutional. In particular, he contended that the application for the search warrant did not justify the authorization for a no-knock entry. The trial court agreed and ruled that all of the evidence obtained through the search was inadmissible. The state then appealed. The court of appeals upheld the circuit court's decision. The state then petitioned the supreme court to review the case.

In a 4-3 decision, the supreme court reversed the court of appeals's decision. The court began by analyzing whether the affidavit – containing the only evidence on which the police relied – provided sufficient evidence to justify the issuance of a no-knock warrant. Specifically, the court asked whether the affidavit presented particular facts that established a reasonable suspicion that knocking and announcing (which would otherwise have been required under the state and federal constitutions) would have been dangerous or futile or would have inhibited the effective investigation of the crime alleged. Though acknowledging that the “reasonable suspicion” threshold is low, the court concluded that the information was not sufficiently particularized to meet that test. The court noted that the affidavit referred to arrest records of two of the apartment's supposed occupants but did not describe any convictions. The court also acknowledged that the police had recently made a “controlled buy” of cocaine from one of them; but that fact, even in view of the officer's training and experience – both of which were discussed in the affidavit – did not permit the court to issue a no-knock warrant.

The court then considered whether the evidence could be admitted given that the warrant had been issued by a neutral and detached magistrate. Initially, the court discussed *U.S. v. Leon*, 468 U.S. 97 (1984). In that case the U.S. Supreme Court created a good faith exception to the federal exclusionary rule, holding that when the police reasonably rely on a facially valid warrant, the “social costs” of excluding the evidence greatly outweigh the deterrent effect that exclusion would have on police misconduct. After discussing *Leon*, the court explained how the exclusionary rule in Wisconsin arose from and has followed federal law. According to the court, adopting *Leon* was the next logical step in that process, particularly given the fact that the court had created the state's first good-faith exception to the exclusionary rule just one year earlier.

The court then rejected each of Eason's arguments against the creation of this *Leon*-type exception: 1) that the exclusionary rule is not a mere remedy subject to revision, but is a right fixed under the Wisconsin Constitution; 2) that the good-faith exception will swallow the exclusionary rule or overrule the case establishing it; and 3) that *Leon*'s cost-benefit analysis is flawed. After doing so, however, the court held that Wisconsin's good-faith exception would require something that *Leon* itself did not. The state must show that the police engaged in significant investigation and that a “police officer trained in, or very knowledgeable of, the legal vagaries of probable cause and reasonable suspicion, or a knowledgeable government attorney” must review the warrant application. The court then went on to conclude that all of the requirements of Wisconsin's version of the good-faith exception were met in this case.

Calling the majority opinion “momentous,” Chief Justice Abrahamson dissented. The chief justice asserted that: 1) the opinion's application of its new tests for admissibility in good-faith cases (that is, the “significant investigation” and warrant review requirements) rendered those new tests meaningless; 2) “the exception betrays Wisconsin's long-standing commitment to excluding illegally seized evidence from use at trial”; 3) the opinion “ignore[d] the role of magistrates, prosecutors, and judges ... in protecting constitutional rights”; and (4) “the majority's cost-benefit analysis [was] inappropriate in the constitutional context and unpersuasive.”

Justice Prosser, writing a separate dissent, criticized the majority for “burying almost 80 years of legal precedent” in a case in which “a few minutes of good police work or careful magistrate inquiry could have prevented the problem.”

No Procreation While on Probation

In *State v. Oakley*, 2001 WI 103, 245 Wis. 2d 447, modified, 2001 WI 123, 248 Wis. 2d 654, the supreme court ruled, in what it called an “atypical” and “exceptional” case, that a parent convicted of intentionally refusing to pay child support for his nine children could be ordered, as a condition of probation, to refrain from having another child, unless he shows that he can support that child and is supporting his other children.

David Oakley was the father of nine children who was charged with seven felony counts of intentionally failing to provide child support for them. Oakley pled no contest to three of those

counts. In sentencing Oakley, the court noted that Oakley had “consistent[ly] disregard[ed] ... the law and his obligations to his children” and that the state would not have prosecuted him had he made “an earnest effort to pay anything within his remote ability to pay.” At the same time, the court recognized that imprisonment would prevent Oakley from earning money to support his children. Therefore, the court sentenced Oakley to three years in prison on one count and placed him on probation for five years for the other two counts (to be served after his term of imprisonment). As a condition of probation, the court ordered Oakley not to “have any more children unless he demonstrates that he had the ability to support them and that he is supporting the children he already had.”

Oakley appealed the court’s decision to impose that condition of probation and on an unrelated ground. The court of appeals upheld the trial court’s decision in both respects, noting that the probation requirement was neither overly broad nor unreasonable. Oakley then appealed to the supreme court.

In a 4-3 decision, the supreme court upheld the lower court rulings. The court began by reviewing what it referred to as the “epidemic of noncustodial parents refusing to pay child support” and its relationship to the pervasive problems of child poverty. It then discussed courts’ authority to punish violations of Wisconsin’s criminal statute regarding failure to pay child support. The court explained that, although empowered to do so, a trial court need not imprison a person violating this statute. Instead, it may place the person on probation, tailoring individualized conditions of probation to meet the goals of protecting society and potential future victims and rehabilitating the defendant. In the court’s view, that is what the trial court did here.

The court rejected Oakley’s argument that the condition of probation violated his constitutional right to procreate. Initially, the court stated that conditions of probation are not subject to “strict scrutiny”, relying in part on an Oregon child abuse case in which a defendant was required to obtain court approval before fathering more children. Citing a variety of federal and Wisconsin probation cases, it then stated that courts may restrict the constitutional rights of a person on probation if the condition is not overly broad and is reasonably related to rehabilitation.

In this case, the court determined that the condition was not overly broad because it permitted Oakley to have children if he “mak[es] efforts to support his children.” It then invoked one of the strict scrutiny tests, holding that the condition was “narrowly tailored” to serve two compelling state interests: having parents support their children and rehabilitating Oakley through probation rather than prison. Finally, it determined that the condition was reasonably related to Oakley’s rehabilitation, since it “essentially bans Oakley from violating the law again.”

Justice Bablitch concurred, indicating that the condition of probation that was imposed was the only realistic way to address the defendant’s intentional failure to support his children. Justice Crooks, in a separate concurring opinion, emphasized that a condition of probation is not subject to strict scrutiny but only to the requirements that it not be overly broad and that it be reasonably related to rehabilitation.

Justice Bradley dissented, arguing that, given that Oakley will be unable to satisfy the prerequisite for fathering additional children under the order, and given the availability of other means to secure Oakley’s payment of child support, the order was “not narrowly drawn to serve the governmental interest at stake.” Justice Bradley also objected to the possibility that the order might lead to state-coerced abortion, that the opinion’s wealth-based restriction on procreation will be applied in other cases, and that the condition of probation cannot effectively accomplish its purposes. Justice Sykes, also dissenting, agreed that the condition was not subject to strict scrutiny but stated that it was an overly broad restriction on Oakley’s right to procreate.

Four months later, the court, in an unusual step, issued an unsigned opinion denying Oakley’s motion to reconsider its decision. In doing so, the court deleted certain language from the majority opinion and Justice Bablitch’s concurrence regarding a prior offense that Oakley had committed. It then reiterated that its earlier holding was based on “exceptional circumstances” and that, under those circumstances, the order was “not overbroad, ... [was] reasonably related to the goal of rehabilitation, and [was] narrowly tailored to serve the compelling state interest in requiring parents support their children.” Chief Justice Abrahamson concurred in the denial of the motion for reconsideration. At the same time, however, she stated that the unsigned opinion “should be fur-

ther developed,” since it did not address the fact that Oakley’s “persistent and stubborn refusal to pay child support [was] limited to a single 120-day period.”

Right to an Attorney During Interrogation

In *State v. Jennings*, 2002 WI 44, 252 Wis. 2d 228, the supreme court addressed what a defendant must do in order to assert the right to an attorney during police questioning and how the Wisconsin and U.S. Constitutions relate to each other in that context. The case began when Edward Jennings was arrested in connection with a murder investigation. A Beloit Police Department detective informed Jennings of his constitutional rights, including his right to remain silent and his right to an attorney, but Jennings initially waived those rights. After some questioning, Jennings admitted that he was present when the murder occurred and that he had heard three gunshots. When asked to put the statement in writing, Jennings stated, “I think maybe I need to talk to a lawyer.” The detective immediately asked, “Are you telling me you want a lawyer?” Jennings responded by repeating his first statement. The detective then left the interrogation room.

Fifteen minutes later, another detective entered the room and asked Jennings if he remembered what he had been told about his rights. Jennings replied that he did. The detective then asked Jennings if he would speak with him, and Jennings said that he would. Jennings then implicated himself in the murder.

At the trial, Jennings sought to prevent the use of his statement. The trial court granted his request, concluding that Jennings had unambiguously asserted his right to an attorney. The state appealed, asserting that the Wisconsin Supreme Court case on which the trial court had relied had been overruled by *Davis v. United States*, 512 U.S. 452 (1994), a more recent U.S. Supreme Court decision.

After clarifying the role of courts of appeals in cases involving conflicts of that type, the Wisconsin Supreme Court addressed the substantive issue and determined that the defendant’s statement should not have been suppressed at trial. Initially, the court noted that, under the Fifth Amendment to the U.S. Constitution, police may not question a suspect who, while in custody, has made a “clear and unequivocal” request for an attorney. But the court then stated that, under *Davis*, police do not need to stop an interrogation, nor do they need to ask clarifying questions, when a suspect makes an equivocal request for an attorney. According to the court, *Davis* effectively overruled the holdings in two earlier Wisconsin cases – to the extent that they were based on federal law – that required police to end an interrogation when a defendant states “I think I need an attorney” or “I think I should see an attorney” or asks “Do you think I need an attorney?”.

The court then asked whether the Wisconsin Constitution’s prohibition against compulsory self-incrimination provides more protection to a suspect in a criminal case than its federal counterpart. The court’s answer was no. It concluded that there was no meaningful difference between the state and federal constitutional protections. The court agreed that police officers should, as a matter of good practice, clarify an ambiguous request for an attorney. But it stated that there is not constitutional basis for requiring them to do so. Finally, the court concluded that its authority to supervise other courts did not include the authority to impose such a requirement on police officers.

Arguing that the majority opinion ignored more than 140 years of Wisconsin law, Chief Justice Abrahamson dissented. The chief justice asserted that: 1) the majority opinion disregarded the court’s authority to interpret Wisconsin’s own constitutional provision independently; 2) the state’s rule requiring law enforcement officers to clarify an ambiguous request for an attorney was prudent; and 3) the rights to a fair and full trial and to an attorney under the Wisconsin Constitution can only be meaningful if police are required to clarify a suspect’s equivocal request for an attorney.

Use of DNA Profiles to Identify Unknown Perpetrators

Under Wisconsin law, if the name of a person who committed a crime is unknown, an arrest warrant or a criminal complaint relating to that offense can identify the person with a physical description. In *State v. Dabney*, 2003 WI App 108, __ Wis. 2d __ (to be published), the court of appeals determined that a warrant or a complaint can also use a DNA profile to identify an unknown perpetrator.

On December 7, 1994, an unknown male kidnapped a 15-year-old girl at gunpoint from a Milwaukee bus stop. After tying the girl's hands behind her back, covering her eyes, and forcing her into a car, he drove a short distance. He then forced her to perform oral sex on him. After driving for another short period of time, he again forced her to perform oral sex on him. When the man finally released the girl, she found her mother and called the police.

Over the next six years, the police were unable to determine who had kidnapped and sexually assaulted the girl. But the police had been able to develop a DNA profile for the suspect, using semen that had been obtained from the victim. Consequently, on December 4, 2000 – just before the time for prosecuting the offenses (the limitations period) was about to expire – the Milwaukee County District Attorney, using the DNA profile to describe him, charged “John Doe #12” with kidnapping and four counts of first-degree sexual assault. About three months later, the state crime laboratory determined that the DNA profile matched that of the defendant, Bobby Dabney. The state amended the complaint to name Dabney as the defendant. Dabney was then convicted of kidnapping and two counts of sexual assault.

On appeal, Dabney contended that neither the warrant nor the complaint identified him with “reasonable certainty”, but the court of appeals rejected that argument. Initially, the court explained that that requirement only applied to the arrest warrant, not to the complaint. Nevertheless, the court acknowledged that a complaint must include the best description of the person available. The court then went on to state that a DNA profile is the “most discrete, exclusive means of physical identification possible” and that it adequately described the defendant in both the warrant and the complaint. The court conceded that the completeness of the warrant and complaint would have been enhanced if they had included the physical characteristics of Dabney that were known to the police. But even without that information, the court concluded, the warrant and the complaint were adequate.

Dabney also argued that by using a DNA profile in the warrant and complaint the state had improperly evaded the statute of limitations. The court, however, noted that the warrant was issued and the complaint was filed – thereby commencing the case – before the end of the limitations period. The court also asserted that the state's use of a DNA profile did not conflict with the purpose of the statute of limitations, which is to protect a defendant from having to defend “against charges of remote misconduct”. The court also stated that recently enacted legislation, which essentially permitted future cases to be brought in the same way as this case was brought against Dabney, showed that the legislature recognized that a DNA profile was an appropriate way to identify a sex offender whose name is unknown at the end of the limitations period.

Finally, the court rejected Dabney's claims that the state's use of the DNA profile violated right to due process. First, the court stated that Dabney was not entitled to notice of the criminal charge when the warrant and complaint were first issued. Second, the court dismissed Dabney's argument that the state had intentionally delayed the prosecution because Dabney had failed to demonstrate that: 1) he was prejudiced by the delay; or 2) the state had delayed the start of the case to gain a tactical advantage over him.

Trial by Numbers

In *State v. Tucker*, 2003 WI 12, 259 Wis. 2d 484, the supreme court set forth the circumstances under which a court may restrict the disclosure of juror information at a criminal trial. Applying that test in the case before it, the court found that juror information had been improperly withheld. Nevertheless, the court upheld the defendant's conviction.

Sherie Tucker was charged with possessing cocaine with intent to deliver it, while she was armed and within 1,000 feet of a school. During the jury selection and the trial, the judge did not permit the parties to use the jurors' names – which she described as her practice in cases involving the sale of drugs. The judge, however, did not explain the practice to the jurors themselves or her reasons for it. But consistent with the judge's practice, the prosecutor and Tucker's attorney had access to information about the jurors, including their names.

Tucker was ultimately convicted. She then appealed, arguing that referring to jurors by numbers instead of names deprived her of the right to an impartial jury. The court of appeals then requested that the supreme court determine the circumstances under which an “anonymous” jury may be used.

The supreme court began by determining that the case did not really involve an anonymous jury after all. According to the court, an anonymous jury is one in which the court withholds information regarding the jury from the parties themselves. But the court stated that, just as in an anonymous jury case, a defendant's right to due process is implicated in a "numbers" jury case. Thus, the court looked to cases involving or discussing anonymous juries to determine the circumstances under which a court can use a numbers jury. It concluded that before doing so, the court "should determine that the jurors are in need of protection and take reasonable precautions to avoid prejudice to the defendant." Otherwise, empaneling an anonymous jury could undermine the presumption of the defendant's innocence.

In this case, the supreme court found that the trial court had not met these requirements. First, instead of making the necessary individualized determination regarding the need to withhold information in Tucker's case, the court relied on its general practice of using numbers juries in drug cases. Second, the trial court did not take any steps to prevent the defendant from being prejudiced by the use of a numbers jury. The supreme court stated that the court, "at a minimum, must make a precautionary statement to the jury that the use of numbers instead of names should in no way be interpreted as a reflection of the defendant's guilt or innocence." The court added that a judge may use additional (but not misleading) precautionary instructions based on the circumstances of the case.

Nevertheless, the court concluded that, given the "overwhelming evidence" of Tucker's guilt, no rational jury would have acquitted her. Therefore, the court concluded, the error was harmless. It also rejected Tucker's arguments relating to the trial court refusal to admit into evidence certain out-of-court statements made by her boyfriend. Thus, the supreme court upheld the conviction.

Chief Justice Abrahamson concurred, arguing that the majority should not have used the harmless error standard. Instead, the court should have determined whether the jury was in fact impartial and unbiased, notwithstanding the improper use of a numbers jury. According to the chief justice, that standard would have been met here, since: 1) only the jurors names were withheld, and only from the public; 2) the use of the numbers jury did not affect the defendant's ability to help select a proper jury; and 3) the trial court's statement to the jury that it was her practice to refer to jurors by number minimized the likelihood of prejudice. Justice Bradley also concurred. She contended that the majority failed to distinguish numbers jury cases from true anonymous jury cases. Thus, it set a precedent for the use of the harmless error rule in both types of cases, even though that rule is generally inappropriate in true anonymous jury cases. She also indicated that the majority opinion conflicted with the Anglo-American tradition of open public trials. Justice Sykes also concurred and, like Justice Bradley, stated that anonymous jury case law does not apply to a numbers jury case. She also argued that using numbers to identify jurors does not undermine the presumption of innocence.

CIVIL LAW

Emotional Damages for Death of Dog

In this case, *Rabideau v. City of Racine*, 243 Wis. 2d 486, 2001 WI 57 (2001), the supreme court was asked to decide if a person who sees someone shoot her dog, and the dog subsequently dies, can recover for the emotional distress resulting from that occurrence. The plaintiff's dog jumped out of the plaintiff's truck and ran across the street into the neighbor's yard. The neighbor's dog, wife, and child were in the yard. Believing the dog was a danger to his family, the neighbor, who happened to be a Racine police officer, used his service revolver to fire a number of shots at the dog. One of the shots hit the dog, which died two days later from the gunshot wound. Upon learning of the dog's death, the plaintiff collapsed and required medical attention. The plaintiff brought an action for damages for negligent infliction of emotional distress and for intentional infliction of emotional distress.

The court acknowledged that humans do form important emotional connections with animals, and that the loss of that animal can cause considerable distress. In previous cases, the court had recognized that damages for emotional distress may be granted if the plaintiff witnesses the death or injury of a spouse, parent, child, grandparent or sibling, even if the plaintiff has no other injury. The court emphasized society's recognition of the deep relationships between these types of indi-

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The court acknowledged that humans do form important emotional connections with animals, and that the loss of that animal can cause considerable distress. In previous cases, the court had recognized that damages for emotional distress may be granted if the plaintiff witnesses the death or injury of a spouse, parent, child, grandparent or sibling, even if the plaintiff has no other injury. The court emphasized society's recognition of the deep relationships between these types of indi-

viduals. The court noted that providing damages in a case involving close relatives is “less likely to be fraudulent and is a loss that can be fairly charged to the tortfeasor.” (p. 499) The court said emotional harm that occurred from witnessing the death or injury of one of these relatives is serious and warrants special recognition. However, the court was not willing to expand that right to recover for the loss of a dog.

The court acknowledged that the law categorizes a dog as property, so the court had to decide if the plaintiff had a claim for negligent infliction of emotional distress arising from a property loss involving an animal who is a human’s companion. Based on public policy grounds, the court denied that claim because the court determined that there was no sensible or just stopping point. It is difficult, said the court, to define the limit of the class of individuals who fit into the human companion category and to determine which class of companion animals should be included.

In determining if the plaintiff had a claim for intentional infliction of emotional distress, the court said that the plaintiff must show that the defendant intentionally caused the plaintiff’s emotional distress. The mere act of intentionally shooting the dog in the presence of the dog’s owner is not enough to meet that burden, said the court. In this case, there was no evidence presented to indicate that the defendant shot the dog to cause plaintiff emotional distress, so that claim is barred, said the court.

The court did conclude that the plaintiff had a claim for the loss of property. Although the plaintiff never made that specific claim in her complaint, the court held the plaintiff’s complaint, liberally construed, included a basic claim for damages resulting from the death of a person’s animal. The court went on to decide that the plaintiff should be allowed to continue the case to determine the damages resulting from the loss of her property, which may include the costs of treating the animal before it’s death. The court also found that the lower court decision to dismiss the case because the defendant had a privilege to kill the dog under s. 174.01, stats., did not apply because sufficient facts were in dispute as to what exactly had occurred at the time of the shooting.

Finally, the court determined that the plaintiff’s action was not frivolous and the award of attorney fees to the defendant was in error because the plaintiff made a good faith argument for extending existing law to provide for damages that result from the loss of a companion animal.

Granting of Variances Under Floodplain Ordinances and DNR Rules

In *State v. Outagamie County Board of Adjustment*, 244 Wis. 2d 613, 2001 WI 78 (2001), what appeared to be simple question about local authority to grant a variance to build a sun room turned into a major case that discussed the relationship between zoning laws, floodplain building controls, and the authority of the Department of Natural Resources (DNR) to enforce administrative rules. More than 11 years ago, the owners of a mobile home received a building permit from a town official to replace their mobile home with a constructed home. However, the owners were not told that they needed to obtain a permit from the county because the property was located within a portion of a floodplain that could be covered by floodwaters during a regional flood. About 11 years later, the owners applied for a building permit to build a sun room, but were told that their basement was below the elevation required under the county’s floodplain ordinance. As a result, they would have to ask for a variance after the fact for the noncompliant basement before they could build the sun room. At the variance hearing, a DNR representative and the zoning administrator objected to the request, arguing that the owners did not meet the criteria for a variance because the home was an illegal structure. On the grounds that it would create a hardship not to do so, the Board of Adjustment granted the variance and noted that the situation had resulted from the negligence of the town building inspector.

The state sought court review of the board’s decision, and argued for the first time in the circuit court that a DNR rule prohibited any variances for flood elevation deviations. Relying on a court of appeals decision, the circuit court upheld the grant of the variance because not to do so would create an unnecessary burden when compared to enforcing the strict letter of the rule and floodplain ordinance. While the state’s appeal was pending, the supreme court reversed the court of appeals decision the circuit court had relied upon. In light of the supreme court decision, the court of appeals reversed the circuit court, denied the variance in this case, and upheld the DNR rule prohibiting the building.

Supported by two concurring opinions and opposed by one dissenting opinion, the supreme court stated that the decision the court of appeals relied upon is wrong and should be overruled

because it erased a longstanding distinction between the standards used for an area variance, which generally applies to a change in the area of a specific structure, and a use variance, which generally applies to a change in the use of a specific structure. The statutes, said the court, require a person seeking a variance to prove that he or she will suffer an “unnecessary hardship” in the absence of the variance. Previously, the standard for measuring “unnecessary hardship” in an area variance case, such as this one, was whether the lack of the variance is unnecessarily burdensome. Under the recent case opinion, the court declared, the owner is required to show there is no reasonable use of the property without the variance. This change in the standard robs local boards of adjustment of the discretion invested in them to grant variances to avoid individual injustices.

The court went on to support the board’s decision to grant the variance because the owners of the property did not create the nonconforming problem, the allowance of the variance will not have a detrimental effect on the neighborhood, is not contrary to the public interest, does not defeat the purpose of the floodplain ordinance, and does not increase the nonconformity. The court then went on to discuss the rule promulgated by DNR that prohibits the granting of a variance to allow any floor of a structure to be below the regional flood elevation, and decided that the rule contradicts the legislature’s grant of authority to issue variances. The court held that to the extent that the rule nullifies the local discretion to issue variances, which is provided for in state statute, the rule is invalid.

The first concurring opinion supported the affirmation of the decision to issue the variance, but did not agree that the earlier supreme court decision removed any distinction between “use” and “area” variances and the discretion of local boards to issue such variances. Instead, the opinion found that the ordinance’s purpose is to guide the determination of whether there is “unnecessary hardship”. In this case, the board concluded that the owners were not at fault for the nonconformity and the board was stopped from denying the variance.

The second concurring opinion supported the lead opinion’s call to override the earlier supreme court decision because that decision virtually abolished the authority of boards of adjustment to grant area variances. The opinion also found that DNR is requesting a retroactive application of a rule that prohibits the placement of a basement floor below the flood level, even though the rule did not exist when the owners built their home, and for which there is no authority in either state statutes or federal law.

The dissenting opinion stated that the case was about giving the owners the authority to build a sun porch; it is not an enforcement action to remove the nonconforming basement. The dissent emphasized the state’s interest in floodplain zoning to protect property and human life, as evidenced by the statutes that support the DNR authority to issue rules in this area. The dissent disagreed with the lead opinion’s position that the legislative grant of authority to issue variances trumps the legislative grant of authority to DNR to regulate floodplain use. The opinion held that the standard for allowing a variance is “unnecessary hardship” and that standard should apply to both “use” and “area” variance requests, and that has been properly interpreted to mean requiring a showing of “no reasonable use”. Finally, the dissent stated that trying to categorize a request for a variance as a “use” or an “area” variance is difficult, if not impossible in some situations.

Recovery of Breach of Contract Damages in Actions for Bad Faith

In *Jones v. Secura Ins. Company*, 249 Wis. 2d 623, 2002 WI 11 (2002), the plaintiff owned a residence and motel that was insured by the defendant. At the time that the plaintiffs first insured the property with the defendant, a representative of the defendant inspected the property. About four years later, the plaintiffs submitted a claim with the defendant because the home appeared to be leaning, the deck was slanting, and the chimney was separating from the house. Saying that the damage was the result of an on-going situation, not a collapse, the defendant denied the claim. About 22 months later the plaintiffs brought an action against the defendant for breach of the insurance contract and bad faith. The circuit court dismissed the action for breach of contract because the one-year statute of limitations for breach of an insurance contract had run.

The defendant then asked the court to declare that the plaintiff could not recover for the loss of the use of their property, lost property, or lost business in the claim for bad faith because those damages are part of the damages available in the breach of contract action, which the court had dismissed. In Wisconsin, bad faith is an intentional tort, which is subject to a two-year statute of

limitations. The circuit court granted the defendant's request, but noted that there has not been a case on point in Wisconsin.

The supreme court was asked to decide if an action against an insurance company for bad faith can include damages available in an action for breach of contract when the statute of limitations bars that action.

The court reviewed the tort of bad faith, as recognized by earlier Wisconsin court decisions and found that bad faith is an intentional tort arising out of a contractual relationship. That contractual relationship, said the court, creates a special duty of good faith and fair dealings related to the contract, based on the fiduciary relationship. If a party can prove that an insurance company acted in bad faith in settling a claim, such as acting in reckless disregard of a reasonable basis while denying a claim, the injured party can recover damages. Damages, said the court, may include compensatory damages, punitive damages, and damages for emotional injury, but are limited to the economic harm proximately caused by the insurer's bad faith. The court also noted that earlier decisions have held that the tort of bad faith is subject to a two-year statute of limitations; the action must be started within two years after the bad faith denial.

The court then discussed the issue in this particular case, whether breach of contract damages can be recovered in an action for bad faith even after the breach of contract action is barred by a statute of limitations. Reviewing previous cases and arguments by both parties, the court held that the breach of contract damages may be recovered in a bad faith action. The court found that the earlier cases recognized that breach of contract and bad faith are two separate claims, each of which has its own statute of limitations. The court decided that an earlier decision that held that an insurer is liable for any damages that are a proximate result of the bad faith is the correct decision. The plaintiff has the burden of proving those damages, which includes any damage resulting from that bad faith, even those damages that could otherwise be recovered in a breach of contract action. The plaintiff may recover only the damages that are the proximate result of the bad faith, held the court.

In support of its decision, the court found that the primary purpose of the tort of bad faith is to redress all of the economic harm that was proximately caused by the insurer's bad faith. The court quoted from Arnold Anderson, *Wisconsin Insurance Law*, "an insurance company should have something more to lose than the contract payment if it intentionally denies a claim it knows it should pay. The contract amount due plus interest is not enough" (page 647). The court went on to say that this decision does not expand the doctrine of bad faith in Wisconsin because the plaintiff still has to prove that the defendant intentionally denied the claim. The court also held that the fact that the plaintiff failed to bring an action on the breach of contract in a timely manner does not preclude the plaintiff from recovering some of the same damages in the bad faith action which is commenced within the two-year statute of limitations.

Responsibility of Server of Alcohol Beverages for Injuries to a Third Party

The major issue in *Stephenson v. Universal Metrics, Inc.*, 251 Wis. 2d 171, 2002 WI 30 (2002), is whether a person who indicates to a bartender that he will drive an intoxicated person home, thus enabling the bartender to serve the intoxicated person more alcohol, is liable for injuries to another person resulting from the intoxicated person's drunken driving. The lower courts held that the person could be liable for the defendant's injuries.

The plaintiff sued because his wife was killed in a collision with the intoxicated driver. At a company party, a bartender denied additional alcoholic drinks to one of defendant's coworkers. The defendant indicated to the bartender that he would give the intoxicated person a ride home, so the bartender served additional alcoholic drinks to the intoxicated person. Later, the defendant left the party without checking on the intoxicated person. It was unclear if the intoxicated person left the party before or after the defendant, but that same night the car operated by the intoxicated person collided with the car driven by the plaintiff's wife, killing them both.

The court noted that every person owes a duty to the world at large to refrain from conduct that could cause foreseeable harm to others. To determine that duty, said the court, the primary question is whether the defendant's actions or omissions were consistent with the general duty to exercise a reasonable degree of care under the circumstances. In this case, the court looked to the Restatement (Second) of Torts, section 324A to determine if the defendant had a duty to give the intoxicated driver a ride home. The Restatement says that if a person agrees to render services

to another which he should recognize as necessary for the protection of a third person, that person is liable to the third person for harm resulting from his failure to follow through with his agreement and that failure increases the risk of harm to the third person.

The lower courts and the plaintiff argued that the supreme court had relied on the Restatement in a similar case in the past to find a person who agreed to care for a four year old and then did not, liable for the harm caused to the four year old when the child was sexually assaulted. The court agreed that the cases are similar and the language of the Restatement does fit the facts of the current case. The court held that the Restatement language does comport to the principles of negligence used in Wisconsin.

However, the court went on to determine if the defendant is immune from liability under s. 125.035 (2) of the statutes, which provides immunity from liability to any person who procures for or sells, dispenses or gives away alcoholic beverages to another person. The court had to determine if the word “procures” includes the behavior involved in this case: telling a bartender a ride will be provided to a person so it is permissible to serve that person an alcoholic beverage. After referring to dictionary definitions and how earlier court decisions in this state and other states defined that term, the court concluded that “procure” means more than just “provide” or “furnish”. In addition, because the statute includes that term in addition to the words “selling”, “dispensing”, and “giving away”, the court held that the term has a meaning different from those terms. The court finds that the legislature created a clear grant of immunity to persons who furnish alcohol to other adults as a way of focusing responsibility on the drinker of the alcohol, not the provider. Based on these findings the court held that the defendant did procure alcohol for the intoxicated person by telling the bartender he would drive him home, so that statute does provide him immunity from any liability in this case.

In spite of finding the defendant not liable under the statute, the court went on to discuss the question of whether the defendant should not be liable for public policy reasons, and found that liability should not arise because the injury sustained was wholly out of proportion to the defendant’s behavior. To allow recovery would put too unreasonable a burden on the defendant to control the intoxicated person’s behavior. To allow recovery in this case potentially allows the law of negligence to enter a field where there is no sensible or just stopping point.

A concurring opinion agreed with the majority that the Restatement of Torts applies in this case, but believed the majority reliance on the term “procurement” to create immunity under the statute is weak in this case. Instead, the concurring opinion would rely on the majority’s public policy argument to prelude recovery.

The dissenting opinion agreed with the majority opinion that under the Restatement language, the defendant broke his promise and should be liable for the resulting harm. The dissent also said that the reliance on the statutory immunity is misplaced because the defendant is liable for failing to keep his promise, not for the unrelated issue of the procurement of alcohol. Finally, the dissent argued that the public policy factors do not relieve the defendant from liability. In this case, said the dissent, the defendant’s behavior was a substantial factor in causing the injury, and he should be held liable for that injury.

Wisconsin’s Open Housing Law and the Perception of Disability

Kitten v. Department of Workforce Development, 252 Wis. 2d 561, 2002 WI 54 (2002), concerns whether the perception of a person being disabled results in that person being protected by the Wisconsin Open Housing Act (WOHA). In this case, Kitten, a landlord, advertised a vacancy in one of the apartments he owned. A person called requesting information and the landlord noted on his telephone caller identification device that the call was made from a hospital. The landlord showed the person the apartment the next day and the person agreed to rent the apartment, showing the landlord financial information that indicated that he could afford the apartment. During the conversation, the prospective tenant admitted that he was currently residing in a residential treatment hospital for an eating disorder. The prospective tenant gave the landlord a check for one month’s rent and a security deposit and signed the lease. The landlord agreed to mail the lease to the tenant, but did not do so. A couple of weeks later, the prospective tenant called the landlord and expressed an interest in moving into the apartment in a few days and asked for the lease. At that time the landlord expressed concerns that the tenant might be readmitted to the hospital and not be able to pay the rent, or would become suicidal and injure himself and possibly other tenants.

At that time the landlord asked for a payment of six months' rent in advance. The landlord tried to talk to the prospective tenant's doctor and asked the individual's mother about his suicidal tendencies. The doctor refused to talk to the landlord without his patient's permission and the mother said her son was not suicidal at this time. The landlord told the prospective tenant that he could not have the apartment unless he paid the six months' rent or his parents cosigned the lease. The prospective tenant refused and asked for the return of the down payment, but the landlord refused to return that money. The prospective tenant then filed a complaint against the landlord for violating the WOHA for exacting more stringent lease terms on him because of his disability.

At the hearing before the Department of Workforce Development, the evidence was insufficient to show that the prospective tenant had an actual disability or a record of a disability. The hearing examiner held that the landlord regarded the prospective tenant as disabled and exacted more stringent terms on the rental because of that perception, in violation of the WOHA. The lower courts agreed with the hearing examiner and the landlord appealed to the supreme court.

The court determined that three issues would have to be decided in this case: whether discrimination based on a perceived disability is sufficient under the WOHA, whether the perceived impairment rises to the level of a disability under the WOHA, and if a disability did exist, did the landlord discriminate based on that disability. Disability is defined under the WOHA, said the court, as a physical or mental impairment that substantially limits a major life activity, a record of having such an impairment, of being regarded as having such an impairment. The latter part of this definition, "being regarded as having such an impairment" is the part of the definition that is involved in this case, the court argued, since there is no evidence that the prospective tenant was impaired.

The court reviewed the statutory language and found that no definition is provided for the term "regarded as" so the court referred to dictionary definitions. There is also no definition of "impairment" in this statute, so the court looked to the definition of impairment the court had used in employment discrimination cases. The court then reviewed a fair employment case where a person was denied employment because he failed to pass a strength test at an earlier time even though he later passed that same test. In that case the court said the perception that a person had a handicap was enough to invoke the statute prohibiting employment discrimination. The court also noted that the legislature had created a definition of handicapped around that same time that included language saying that a person is handicapped if he or she is perceived to having certain impairments.

The court, noting that the employment discrimination statute is similar to the WOHA, held that the complainant does not have the burden of proving an actual disability if a perceived disability can be proven, based on the employment case, WOHA, and the changed statute. Instead, said the court, disability exists if there is a real or perceived impairment and the impairment is perceived as substantially limiting one or more major life activities. In this case, said the court, the landlord perceived that the prospective tenant had an impairment, and, as a result, contacted the individual's doctor and mother. The evidence indicated that the landlord believed the prospective tenant suffered from depression and was likely suicidal. The court went on to find that the landlord believed that this impairment would substantially limit one or more major life activities, as indicated by his concern that the prospective tenant could be readmitted to a residential treatment facility for severe depression, and could not function on his own. The court found that the landlord regarded the prospective tenant as disabled.

Finally, the court looked at the evidence in the hearing to determine if the landlord, based on his perception that the prospective tenant was disabled, treated him unequally in the terms, conditions or privileges of rental of housing, in violation of the WOHA. The court found that requiring six months' advance rent, even when given evidence that the prospective tenant had sufficient funds to pay rent, was based on a concern that the tenant could be hospitalized or suicidal, constitutes unequal treatment and unlawful discrimination against the prospective tenant based on a disability. The court affirmed the decisions of the lower courts and hearing examiner.

Consideration of an Exemption to the At-Will Employee Doctrine

The supreme court was asked to extend the exemption from the at-will employee doctrine in *Bammert v. Don's Super Valu, Inc.*, 254 Wis. 2d 347, 2002 WI 85 (2002). The doctrine originates in a common law rule which provides that an at-will employee is one who is not covered by an

employment contract, a union contract, or a public classified contract. An employer may fire an at-will employee for any reason, without cause, and with no judicial remedy. In this particular case, a law enforcement officer helped arrest a woman for drunk driving. The woman was the wife of the owner of a supermarket where the law enforcement officer's wife worked as an assistant manager. In retaliation for her husband's participation in the drunk driving arrest, the employer fired her. She brought an action, alleging a wrongful discharge. The circuit court dismissed the complaint for failure to state a claim and the court of appeals affirmed that decision.

To determine if there was a wrongful discharge, the court looked at cases that established a public policy exception to the employment-at-will doctrine allowing an at-will employee to sue if a discharge is contrary to a fundamental public policy under existing law. This exception, the court noted, is very narrow because employers should have discretion in managing their work force. This exception only applies, the court said, when it involves a public policy that is in the constitution, statutes, or administrative rules. Examples include the discharge of a nursing home employee who complied with an obligation to report patient abuse and a commercial truck driver who refused to drive without a commercial driver's license. Generally, an at-will employee has no legal remedy for an employer's unjustified decision to terminate his or her employment, even if that termination is unfair, unfortunate, or harsh.

In the current case, the court noted, the plaintiff argued that two public policies are involved: the statute that prohibits drunk driving and one that promotes the institution of marriage. Admitting that these policies are fundamental, the court went on to say they are not helpful in this case because the plaintiff was not fired for her participation in the enforcement of the drunk driving laws. In this case, according to the court, the discharge is for an action by someone outside the employment relationship, and to expand the public policy exception further is beyond what is contemplated by case law. The public policy exception, the court said, is rooted in the principle that an employer may not require an employee to violate a constitutional or statutory provision. That is not the case here, where the spouse is fulfilling a statutory responsibility. The court went on to say that to expand the exception, as requested by the plaintiff, would be almost impossible because it would leave no way to draw a line in a principled way. Acknowledging that the facts of this case lead to a sense of outrage and a desire to provide a remedy, the court held that to expand the public policy exception to the at-will employment doctrine would invite future applications that would go far beyond its current scope, and affirmed the lower courts.

The dissent suggested that an additional narrow exception be added to the at-will employment doctrine when retaliation results from a law enforcement officer acting lawfully in his or her job. Allowing a person to fire an employee in response to a law enforcement officer's lawful activity is unacceptable, said the dissent, because it allows a person to influence an officer in the enforcement of the laws of the state. Vigorous enforcement of the law should be encouraged, not discouraged by allowing an employer to retaliate against the policy officer through his or her spouse. This proposed exception, the dissent argued, is consistent with past precedent, which prohibited firing for following state law. In this case, we should not support a doctrine that discourages a police officer from enforcing the law because of the possibility of retaliatory firing.

Personally Identifiable Information in Education Records and Open Records Requests

The petitioner, *Osborn v. Board of Regents*, 254 Wis. 2d 266, 2002 WI 83 (2002), requested information from the University of Wisconsin System (UW) to analyze and compare data regarding the admission policies and practices of public institutions. Included were open records requests for Scholastic Aptitude Test (SAT) scores, American College Testing Achievement (ACT) scores, high school rank, and high school grade point average for different ethnic groups, including those who enrolled and those who were denied admission. Although the UW provided some information, it refused to provide most of the requested data because it involved personally identifiable information that federal law prohibits from being disclosed. In addition, the rest of the data was maintained in individual files, and extracting that information would require creating a new record, which is not required under the Wisconsin open records laws. The petitioner asked the circuit court to order the UW to provide the requested records with personally identifiable information removed. The circuit court denied the release of records to those who attended the UW, saying federal law prohibited their disclosure. The circuit court said federal law does not protect the records of those who did not attend the UW. Since that information is only available

in individual records, the petitioner would have to look at each record, because the UW was not required to create a new record under the state open records law. Upon appeal, the court of appeals said all of the records are exempted from disclosure under federal law, and even if they were not, the public policy of preserving the privacy of student records prevented their disclosure. The court of appeals also said the records are not subject to release even if the names are redacted. The UW is not required to review each record and remove part of that record to preserve the student's privacy.

The supreme court first looked at the scope of the federal law and the state open records law to determine what may not be disclosed from education records. Under state law, said the court, there is a presumption of open access to public records that is reflected both in the statutes and case law. Access is not absolute, said the court, and the record custodian may deny access where the legislature or the court has determined that the public interest in keeping a record confidential outweighs the public's right to access. In the current case, the custodian based their denial of access on the federal law, on public policy, and on the statute that the UW claimed does not require them to create a new record for an open records request.

The court noted that the federal law does not prohibit disclosure of education records. It deprives an educational institution of federal funds if the institution discloses educational records or personally identifiable information from educational records without consent. One of the issues in this case, the court said, is to what extent the federal law protects from disclosure the records requested by the petitioner. The court rejected the UW's argument that all student records contain only personal information, so they are all protected from disclosure by the federal law. Instead, the court concluded that the federal law protects disclosure of education records, not all information contained in those records. The federal law only prohibits the release of personally identifying information in the record, and the whole record, which would include such information. Based on the federal regulations implementing that law, the court concluded that information that would make it possible to trace the student's identity may not be disclosed.

The court then examined what the petitioner requested, which included test scores and grades, but specifically excluded the student's name, social security number, address, or parent's name. Based on this request, the court held that the petitioner is not requesting any information that the UW is prohibited from disclosing under the federal law. The court went on to say that the UW could refuse to disclose requested information if in fact it did include personally identifying information.

The court then considered the public policy reason for denying access to the public record, namely that the requested information implicates the personal privacy and reputational interests of individual students. The court noted that the reason for the request, as stated in the briefs, is to gauge the effectiveness and appropriateness of the UW's admission policies and to keep the actions of public universities accountable. Applying the balancing test that presumes public records will be open unless a public policy prohibits their disclosure, the court agreed that the records should be open because the petitioner is not asking for information that is traceable to a particular student and the data would be used to analyze the UW admission policies, not to delve into the privacy of individual students.

In response to the UW's final argument that in order to comply with the request, the university will have to create a new record, the court noted that current law requires a record custodian to provide the information requested and delete information that is not subject to disclosure. This, said the court, is exactly what the petitioner requested. He wants only information that is subject to disclosure. He asked the UW to redact the confidential information. The burden of doing the redacting is not a reason for failing to provide the requested information. Instead, said the court, the UW has the right to charge a fee for the actual, necessary and direct cost of complying with the petitioner's open records request.

Authority to Establish Use-Value Assessment Before 2009

The issue in *Mallo v. Wisconsin Department of Revenue*, 253 Wis. 2d 391, 2002 WI 391 (2002), was whether the Department of Revenue (DOR) had authority to issue a rule that provided for the assessment of agricultural land for taxation purposes based on its use-value, effective January 1, 2000. Prior to January 1, 1996, agricultural land was assessed the same as all other real property, at its fair market value based on its highest and best use. As a result, agricultural land located near

a city or other development was often assessed as prime development property, since that was its highest and best use. The legislature decided that such property should be assessed under a use-value assessment, based on the income that the property would generate from its rental as agricultural use. The law that is at issue in this case included three implementation stages, a freeze of assessments for two years, a phase-in stage, and a final stage where the use-value assessment would be fully in effect. Under the law, the final stage had to begin no later than January 1, 2009.

To implement the new law, DOR promulgated rules that froze assessments on agriculture land for 1996 and 1997. The rules further provided that a shift of 10 and 20% toward use-value assessments in 1998 and 1999, respectively. In response to recommendations of the farmland council that was created as part of the act, DOR promulgated an emergency rule that fully implemented the agriculture use-value assessments beginning on January 1, 2000. The department then prepared a permanent rule to go into effect when the emergency rule expired. As with all proposed rules, the permanent rule was submitted to standing committees of the senate and assembly, but neither committee objected to the rule's contents. The permanent rule was published and went into effect on August 1, 2000. The petitioners, who owned farmland, filed an action challenging the validity of the rules, saying DOR exceeded its authority in eliminating the 10-year phase-in of the rule required by the statute. The circuit court denied the petitioners request for an injunction and the case was certified to the supreme court.

The court said that if DOR did not have authority to promulgate the rule, the rule must be invalidated. To determine DOR's authority, the court reviewed the statute involved to determine if it expressly or implicitly authorized the rule promulgation. Although the petitioners argued that the statute unambiguously requires a 10-year phase-in of the use-value assessment, the court concluded that the statute grants DOR authority to promulgate a rule without waiting the full 10 years. The statute, stated the court, requires that the mixed-use phase-in assessments are to end no later than December 31, 2008, but does not say that it cannot end earlier. If the legislature intended to have a mandatory 10-year phase-in, it could have easily chosen words to establish a fixed date. Instead, said the court, the legislature specified the latest possible ending date and included language saying the full use-value assessment would occur on the January 1 after the phase-in mixed assessment method ended, without specifying a date for ending the mixed assessment period.

The court went on to note that both senate and assembly standing committees reviewed the proposed permanent rule, which included the mandatory use-value assessment date of January 2000, and neither committee objected to the rule. Noting that the proposed rule received considerable press coverage and that members of majority party in the senate provided funding to challenge it in circuit court, the supreme court found that the legislature knew of the proposed rule yet did not challenge it through the standing committees. This, said the court, indicates that the legislature intended to grant DOR the authority to promulgate the rule without the full 10-year phase-in.

The dissent argued that the elimination of eight of the 10-year phase-in of the use-value assessment method was inconsistent with the statute, and cites language from an attorney general's opinion supporting that position. The intent of the legislation was to slowly shift the tax burden resulting from going to use-value assessments of agricultural land. The dissent argued that the legislation provided the phase-in of 10% each year, ending with full use-value assessments in 10 years, as the way to slowly shift the tax burden.

Public Nuisance and Negligence in Recoveries for Injuries

This case, *Physicians Plus Insurance Corp. v. Midwest Mutual Insurance Corp.*, 254 Wis. 2d 77, 2002 WI 80 (2002), discussed the relationship between public nuisance and negligence theories of recovery in a tort action. In this case, a car driven by a woman who had been drinking went through a stop sign and hit a motorcycle, injuring both passengers. The car driver said she did not see the stop sign because it was hidden by tree branches. The tree was located on private property but overhung the roadway and partially obstructed the stop sign. The injured party sued the driver, the owner of the tree, the town that maintained the roadway, and the county that maintained the stop sign. The day after the accident the owner of the tree and the town officials trimmed the tree branches so the stop sign was no longer obstructed. At the trial court the owners of the tree, the town, and the county moved for summary judgment, saying they were not liable for the injuries. The circuit court rejected their motions and found that each of the parties were liable for failing to meet their duties to trim the tree and remove the hazard that obstructed the stop sign.

The three appealed and the court of appeals held that each defendant was liable for maintaining a nuisance. However, the court of appeals decided that a jury should determine if the obstruction was a cause of the injury and ordered the circuit court to ask a jury to apportion responsibility for the accident between the driver, the tree owner, the town, and the county.

The supreme court went to great lengths explaining the difference between public nuisance and negligence theories, although noting that the two overlap in many respects. The court said a public nuisance is a condition or activity that unduly interferes with the use of land and that liability for a public nuisance could be based on either negligent or intentional conduct that maintained the condition. In both negligence and public nuisance cases, said the court, notice and causation must be shown. If all of the elements of a public nuisance are found, the person who maintained the public nuisance is negligent in law. In addition, as in negligence cases, the court held that liability for maintaining a public nuisance can be limited by public policy considerations.

The court reviewed the evidence in the trial court record and determined that the stop sign was largely obscured by the branches of the tree owned by the private landowners, and this obstruction created a public nuisance because it interfered with the use of the land. The court went on to find from the record that the branches had been obstructing the stop sign for at least three months, and perhaps as long as a couple of years. This extended period of time, said the court, is enough to give the private landowner, town, and county notice that a public nuisance existed. The court then looked to the issue of causation and determined the defendants had a duty to remove the obstruction, and failing to do so, may have contributed to the cause of the injury. However, because of the evidence of the driver's drinking before the accident, the supreme court agreed with the court of appeals and decided that a jury should decide to what amount, if any, that the obstruction caused the injuries.

The court then turned to the public policy arguments made by the defendants, rejecting each in turn. A duty of care exists, said the court, whenever it is foreseeable that an act or omission might cause harm to another. Liability for breaching that duty may, however, be excused based on public policy considerations. The homeowners argued that it was the county's duty to maintain the stop sign and the town's duty to maintain the road. But, said the court, the duty in this case was to remove a nuisance, which involved branches of the owners' tree obstructing the stop sign. This duty was, in part, the tree owners' responsibility, and there is no public policy argument that relieves them of that responsibility. The court then turned to the county's arguments that it is not liable on public policy grounds, saying it was not responsible for maintaining the tree on private property or for maintaining the roadway. In addition, based on earlier cases, the county argued that it is not responsible for trimming vegetation in order to assure motorist visibility. The court rejected the latter argument, saying the case cited applied to trimming vegetation so that views at an intersection are not obstructed, which is significantly different than trimming a tree to see a stop sign. The court also noted that statutes, earlier court cases, and the Department of Transportation require the county to take necessary action to assure that the face of a stop sign is not obscured. Finally, the court said that the town, being responsible for maintaining the roadway, has the duty to remove a hazardous condition present in its right-of-way, which in this case, involved overhanging tree branches.

In conclusion, the court held that a public nuisance did exist, all three parties had a duty to remove that nuisance and no public policy exists for relieving them of that duty, but whether or to what extent that failure to remove the public nuisance caused the injuries to the plaintiffs is a decision for a jury to make.

The concurring opinion did not understand why the majority opinion insisted that this case is grounded in public nuisance, when the majority cited the elements and rules used in an action for negligence throughout its decision. For example, the majority argued that liability for maintaining a public nuisance can be based on negligent conduct, said the principles of comparing and apportioning liability negligence ought to be used, argued both notice and causation principles, and, as in negligence actions, said public policy considerations may limit liability.

Conversion of Rental Boat Slips to "Dockominiums"

In *ABKA Limited Partnership v. Wisconsin Department of Natural Resources*, the supreme court held that the conversion of an ordinary marina owned by ABKA into a "dockominium" project on Lake Geneva was an invalid effort to convey rights of waterfront property ownership

to persons who purchased “condominium units” in the dockominium project. The project involved the creation of 407 individual condominium units, with each unit being like a small post office box measuring approximately 120 square inches. Before trying to sell the condominium units, ABKA rented the 407 boat slips to boat owners on a seasonal basis. DNR required ABKA to modify its existing permit for the 407 boat slips to allow for the condominium conversion. With the purchase of one of these condominium boxes, the condominium owner would enjoy the status of an owner of lakefront property under state law as opposed to being a mere renter of a boat slip.

Under DNR’s permitting process, a third party filed an objection to the project and an administrative law hearing was held. At the hearing, the judge held that to have that many waterfront property owners would exceed the reasonable use of the lake frontage involved and thus violate the public trust doctrine found in the state’s constitution. The public trust doctrine establishes that waterfront property owners have the right to reasonable use of their property but this right is secondary to the public’s right to use and enjoy the state’s navigable waters. The judge therefore allowed for the creation of 120 dockominium units which would result in 120 boat slips, each having a separate waterfront owner; the judge ordered that the remaining 287 boat slips continue to be rented.

ABKA appealed the decision to circuit court where it was affirmed. Subsequently, ABKA appealed the decision to the court of appeals. The court of appeals reversed the circuit court’s decision to allow any of the condominium units to be sold. The court of appeals held that allowing private dockominium units would violate the public trust doctrine because it transferred the ownership of rights under the public trust doctrine to private individuals.

Upon appeal, the supreme court also held that the condominium project was in violation of state law but for a different reason. The court held that such a box was not a condominium within the meaning of the statutes regulating condominiums and therefore an “owner” of a box was not a condominium owner with full waterfront property rights. Instead, the court held that ABKA had attempted to transfer less than all of the full waterfront ownership rights. These partial transfers violated a statutory prohibition against transfers of waterfront property rights without the transfer of total ownership and therefore were invalid.

Justice Bablitch, in his concurrence, agreed with the holding of the court of appeals that a dockominium project would always be a violation of the public trust doctrine.

Justice Sykes, in her dissent, argued that DNR did not have the authority to require ABKA to seek another permit since there were no changes in the physical configuration or number of the boat slips and the dockominium project only involved a change in the form of ownership. She also disagreed with the majority’s holding that a dockominium unit was not a condominium within the meaning of the statutes regulating condominiums.
